

# Minnesota Department of Human Services Aging and Adult Services Division

## Request for Proposals for a Qualified Grantee to Develop and/or Provide Services for Older Minnesotans to Live in the Community.

### Live Well at Home Grants

(formerly Community Service and Community Services Development Grants)

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# **I. Introduction**

## **A. Purpose of Request**

The Minnesota Department of Human Services, through its Aging and Adult Services Division (State), is seeking proposals from qualified responders to improve their community's capacity to develop, strengthen, integrate and maintain home and community-based services for individuals age 65 and older, at-risk of long-term nursing home use and/or spending down into Medical Assistance. Proposals may include strengthening services for the caregiver support and respite care network.

Grants are intended to stimulate innovation by providing one-time, start-up funds to test new approaches in housing and home and community-based services development, and to develop and support core home and community-based service providers. More detail can be found in [Home and Community-Based Services For Older Adults Minnesota Statutes, section 256B.0917, subd. 1a and 1b](#), [Caregiver support and respite care projects Minnesota Statutes, section 256B.0917, subd. 6](#), [Core home and community-based services Minnesota Statutes, section 256B.0917, subd. 7a](#), [Community service grants Minnesota Statutes, section 256B.0917, subd. 13](#), and the [Community Services Development Grants Program Minnesota Statutes, section 256.9754](#).

During State Fiscal Year (SFY) 2016 it is estimated that approximately \$7.5 million will be available to Qualified Responder(s). Qualified Responder(s) are applicants that provide the following:

- 1) All Required Statements (as determined on a pass/fail basis)
- 2) All Proposal Requirements (as determined by a formula set forth in the RFP and ranked very high/competitive when compared to other proposals received), and
- 3) Are a public, private for-profit or non-profit agency

## **B. Objective of this RFP**

The objective of this RFP is to contract with a qualified responder(s) to perform the tasks and services set forth in this RFP. The term of any resulting contract is anticipated to range from 12 to 24 months, from July 1, 2015 until June 30, 2017, with the option to extend beyond that date. The maximum initial award per year is \$250,000.

Proposals, both the electronic submission and the printed signed hard copy from the online application site, must be submitted by 4:00 p.m. Central Time on Friday, March 27, 2015. Electronic submissions are entered online at <http://www.mn.gov/dhs/live-well> and hard copies printed from the online application site must be sent either via mail or hand delivered to the Minnesota Department of Human Services, 444 Lafayette Road North, Saint Paul, MN 55155. This RFP does not obligate the State to award a contract or complete the project, and the State reserves the right to cancel the solicitation if it is considered to be in its best interest. All costs incurred in responding to this RFP will be borne by the responder.

## C. Background

In 2000, the Long-Term Care Task Force of the Minnesota Legislature was convened to address critical long-term care issues. In 2001, based on the recommendation of the Long-Term Care Task Force, the Minnesota Legislature enacted a number of strategies intended to reshape long-term care. The central theme of the reforms passed by the Minnesota Legislature was to reduce Minnesota's reliance on nursing homes and to increase care for older persons in the community by expanding home and community-based service options.

One element of the strategy provided funds under the Community Service Grants (Minnesota Statutes, section 256B.0917, Subd.13) and the Community Services Development Grants Program (Minnesota Statutes, section 256.9754) to provide a catalyst to further reshape the state's long-term support system. Grants are administered through the Minnesota Department of Human Services, Aging and Adult Services Division. The department began funding projects through the grant program in 2002.

Grants are available to public, private for-profit and non-profit agencies to strengthen a community's ability to provide affordable long-term services and supports for older persons. The funds are for projects that expand, integrate and help sustain the services and infrastructures that enable older adults to remain in their own homes and communities. They also support family caregivers and further the integration of medical and long-term services and supports in local communities. Grants promote the development of services that are available to people of all income levels, in particular to those who are eligible for public programs, and that expand affordable options that are sustained through the private market. Grants are also available to fund capital and renovation projects to help transition the state's long-term care capacity into community-based settings. These projects include new construction, renovation or remodeling of existing buildings to provide innovative and affordable housing and services for older adults.

Grants are used to permanently change the long-term service and support system in conjunction with a variety of federal, state, local and private funding sources for long-term support and services such as, Older Americans Act funds, Medical Assistance, foundation grants and private pay resources. Grants coordinate with federal grants designed to further the State's work reforming its long-term services and support system such as: Center for Medicaid and Medicare Services Money Follows the Person, Department of Transportation Veterans Transportation Community Living Initiative and Medicaid Reform. The Grants have also promoted new models of information and assistance through the Minnesota Help Network—Minnesota Aging and Disability Resource Center Initiatives.

### **Aging 2030**

In order to address the challenges of the coming dramatic increase in Minnesota's older population and the resulting permanent shift in the age of the state population, the Minnesota Department of Human Services, in partnership with the Minnesota Board on Aging and the Minnesota Department of Health, initiated Aging 2030 in 2011. This project focuses on five key

themes listed below to prepare Minnesota for the greatest challenges posed by the growth in health and long-term care needs.

1. *Redefining Work and Retirement*: seeks to engage older Minnesotans in “vital aging” opportunities such as volunteerism and civic engagement.
2. *Supporting Caregivers of All Ages*: increases the supply and the types of caregiver supports and respite care services available, increases public awareness of these services, and activates informal networks to support individuals who do not have family or other supports.
3. *Fostering Communities for a Lifetime*: transforms the physical infrastructure of a community to provide greater housing and mobility as well as strengthening a community’s capacity to provide affordable supports to older people wanting to age in place and the products and services that help community residents stay independent and engaged as they age.
4. *Improving Health and Long-term Care*: promotes health by helping people maintain their health and independence, increasing consumer control, and ensuring that people with multiple chronic conditions have access to quality chronic care.
5. *Maximizing the Use of Technology*: expands the use of technology to help people remain independent, using tele-health and related technology to address worker shortages and distance issues, and uses the Internet to expand access to information about resources for consumers and their families.

Grants have been used to implement many of the action steps proposed by Aging 2030. The funds have served as “venture capital” that has allowed community partners to be innovative in developing new, cost-effective and sustainable approaches to help older Minnesotans maintain their health and independence. They have helped to expand the supply and variety of home and community-based service options for older adults in the community.

In 2011, the leading edge of the baby boom generation born between 1946 and 1964 began to turn 65 at the rate of 10,000 per day across the United States. Between now and 2030, Minnesota will experience the most profound age shift in its history. Along with the rest of the nation and the world, we will become older not just as individuals but as a society. In addition, there will be a significant increase in ethnic and cultural community members whose needs must be addressed with culturally competent services

According to Minnesota State Demographic Center, between 2010 and 2030 the number of people in Minnesota age 65 and older will double. The fastest growing segment of Minnesota’s aging population are those people over the age of 85 who are most likely to need the support of family, friends and the community to remain living independently. In 1990, one in eight Minnesotans was 65 years or older. In 2030, one in four Minnesotans will be 65 years or older. The aging of our society will create exceptional pressures on the existing long-term service and support system, and the next 15 years are a critical time to prepare for the challenges

Minnesotans will face in the future when health and long-term services and supports needs soar.

Because the State is a major payer of long-term care, this increase in need has the potential to overwhelm the State's budget. We must focus on key strategies that will help prepare for this increase.

One strategy is to invest in developing community-level housing and service solutions that help people avoid the public safety net. Minnesota's long-term care system must allow older Minnesotans and their families more control over and responsibility for their care. These community-based options must be based on the preferences of consumers and be market-driven, include more cost sharing options. A second is to improve the integration of medical and long-term services and supports (LTSS), as well as community-based services, so we can better serve consumers and improve the efficiency and effectiveness of these services. A third is to achieve positive outcomes for the consumers, so they are able to achieve their goals for independence and aging in place. Successful aging in place addresses prominent health issues such as diabetes care and cognitive decline as well as the impact of other conditions such as hearing and/or vision loss.

## II. Scope of Work

### A. Overview

This RFP provides background information and describes the services desired by the State. It delineates the requirements for this procurement and specifies the contractual conditions required by the State. Although this RFP establishes the basis for Responder Proposals, the detailed obligations and additional measures of performance will be defined in the final negotiated contract.

Two general categories of proposals are requested:

- 1) Capital and Renovation (\$250,000 or less)
- 2) Long-Term Services and Supports Development (\$250,000 or less)
  - \*Core Home and Community-Based Services (\$50,000 or less)

#### Category 1— Capital and Renovation Requests

Applications in this category cover new construction, renovation, retrofitting, home modification, adult day services, transportation and technology.

Applications may be made for grants to cover the capital costs of new construction, renovation, retrofitting, or remodeling of existing buildings or accessibility modifications in individuals'

homes. Renovation and remodeling should result in the delivery of unique approaches to housing and services, affordable housing units suitable for home care services or combinations of services, to residents age 65 and older with low and moderate incomes and persons with a variety of chronic health conditions. Retrofitting should produce savings for older adults as it reduces costs of medical care and other services. It focuses on homes that lack the necessary structural features and support systems to make aging in place viable. The State seeks applicants who promote self-sufficiency, independence, quality-of-life values, e.g., safety, privacy, space to enjoy relationships and individual and/or community activities, and integration into the larger community. The responder should demonstrate how those values are supported by the proposed home modifications or new construction, technology or services.

For new construction the State requires single occupancy living units that have at a minimum private lavatories and showers (3/4 baths), a food preparation area suitable for a mini-refrigerator and microwave, and that have a total of at least 400 square feet. Accessible common and living areas are preferred. Both physical accessibility and communication accessibility (using hearing loops, for example) are important in common and living areas. Priority will be given to development of projects in communities in which there are no housing with services within a 15 mile radius of the proposed project site and a community needs is clearly demonstrated. The requirements listed above are preferred for renovation and nursing facility conversion projects. These projects should result in apartment-based housing or settings that are licensed as board and lodge facilities. Units intended for use in memory care programs must be built so that potentially hazardous plumbing and electrical elements may be disabled.

Renovation, retrofitting and home modification includes making existing housing units accessible and/or incorporating elements of universal design. Information on universal design is available at [http://www.dhs.state.mn.us/id\\_006203](http://www.dhs.state.mn.us/id_006203) or by contacting a Certified Aging-in-Place Specialist (CAPS). CAPS are trained in the unique needs of older people and have a strong grounding in universal design – designing homes to maximize the safety, usability and comfort of all residents.

The State expects projects to incorporate the latest in technology, design features, universal design and appropriate home modifications into capital or renovation requests where possible. Buildings may include existing nursing facilities, subsidized senior apartment buildings, board and lodge, adult foster care homes and private homes of persons with low to moderate incomes.

Applications in this category may include other minor expenses such as alterations of office space, purchase of laundry, kitchen and bath equipment, and start-up costs, such as: training and other onetime expenses. Home modifications to individuals' homes or apartments can also be funded when the planned modifications are part of meeting broader community needs.

We are also interested in proposals that focus on new approaches to providing housing and services that support groups of consumers who may desire housing options that have forms of

joint ownership and with innovative purchase and delivery of basic services models, especially for those who can pay privately. This category would include funding an organization that would test their model and develop a manual or guide based on its experiences developing that prototype.

## Category 2 - Long-Term Services and Supports Development Requests

The State of Minnesota is committed to helping older adults and their family caregivers manage risk factors that may lead to a nursing home placement and/or spending down into Medical Assistance and purchase support to sustain independent community living, control publicly funded health and long-term care system spending, improve integration between health and long-term services and supports, and increase home and community-based services capacity. This service capacity includes, but is not limited to, community supports such as: chore, homemaker, caregiver support, respite, chronic disease management to enable those persons most at risk to avoid unnecessary nursing facility placement.

The State is also committed to ensuring that any long-term services and supports development is sustainable into the future given current demographic and state revenue projections. The Live Well at Home Grants provide funding and incentives to make some long-term service and support changes possible. Live Well at Home Grants are used to test new approaches to prevention, risk management, and community living support targeted towards persons spending down to eligibility for Medical Assistance and its waivers or at –risk of long-term care nursing home placement. These approaches should also be available to private pay individuals who can use some of their own resources to purchase services that meet their needs.

Characteristics of at-risk older adults may include but are not limited to:

- Needing assistance with one or more activities of daily living
- Experiencing an injurious fall in the past six months
- Thinking about moving to a nursing home or assisted living facility
- Experiencing memory loss or difficulty with making decisions
- Receiving care from a family member who is overwhelmed or stressed because of their caregiving role

Different service delivery models are needed to reduce and/or stabilize risk factors, manage chronic conditions, optimize independent community living, and ensure alternatives to long-term stays in nursing facilities. Disparities in access to home and community-based services and supports for hard-to-reach populations need to be addressed. The State recognizes that tribes, counties, managed care organizations and healthcare systems, area agencies on aging (AAAs), quasi-formal service providers (e.g., faith-based, culturally-focused or other volunteer resources), and others, are key to integrated long-term service and support delivery. Applications may be submitted for projects that target long-term services and supports change.

The selected projects will address one or more of the following objectives:



- Expand, integrate and maintain essential community support services that enable older adults to remain in their own homes and communities;
- Integrate medical and community-based long-term services and supports and promote self-management of chronic disease and other risk factors, including support for family and informal caregivers;
- Support individual choice, control, and private pay purchasing;
- Support at-risk families and informal caregivers and expand the caregiver's service network;
- Collaborate between long-term service and support providers, health care providers, other state agencies, other funders, policy makers, community organizations, local businesses including employers and consumers; and
- Use a variety of technologies to help people live in the community, assess needs, manage health and chronic disease, deliver services and caregiver support, monitor and evaluate outcomes, improve quality, purchase and manage services by consumers, supervise and train staff, manage data, simplify administrative and service delivery processes, reduce costs and/or provide more consumer autonomy and choice. The goal is to use technology to close the distances and remove impediments that act as barriers to home and community-based services.

The majority of older Minnesotans prefer to age in their own home and communities for as long as possible. However, the aging of the population will pose new challenges for the delivery of home and community-based services such as chore, homemaker, in-home services, transportation and housing.

The State supports quality care and services for older Minnesotans so they can live independently in the community in the least restrictive setting of their choice. The State does this by working in collaboration with partners to fund the development of a comprehensive and coordinated system of home and community-based long-term services and supports. Partners include, but are not limited to, counties, AAAs, nursing facilities, health plans, health care systems, physicians and clinics, consumers, universities/colleges, public and private housing owners, employers, tribes, local social service providers, faith-based organizations, grass-root organizations, organizations and other for-profit and non-profit organizations. All partners are encouraged to strengthen their community relationships with diverse populations whose ethnic, cultural, language, social, sexual, gender or residential status or other factors which indicate that specialized services will aid the population(s) in reaching their full health potential as defined by the Minnesota Department of Health.

These long-term support and service partners are critical to developing and delivering services and supporting self-directed support options that enable older Minnesotans to live in their own homes and communities.

Supporting families and informal caregivers, strengthening the long-term service and support system, integrating consumer services, using specific evidence-based practices and maximizing the use of limited funding resources requires collaboration among health, housing, health care and long-term care system stakeholders, local businesses and governments. Strengthening the

community-based long-term service and support system also involves identifying state and federal policies, service delivery structures, and funding mechanisms that may be barriers to addressing strategic goals for optimizing independent living for older adults.

The State is interested in funding projects in the following priority areas:

### **Essential Community Supports (ECS)**

Expand and maintain a set of services that are critical to maintaining community living for older adults and their family and informal caregivers. Such services include caregiver support, chore, homemaker services and personal emergency response devices, home delivered meals and community living assistance. In order for different services to be considered, local evidence of the need for the service(s) must be provided. These cost-effective services, when provided to an individual who is beginning to experience a need for home and community-based services and supports, can stabilize an individual and prevent or delay their spenddown to Medical Assistance or a move to an assisted living or nursing facility.

These services are needed by older adults regardless of income level. Proposed service models must determine the true unit cost to deliver the service(s) and incorporate a sliding fee scale in order to ensure access for all individuals to the services. Equally important is maximizing the use of volunteers, unlicensed service professionals and other community resources to maximize the availability of services in a proposed geographic area.

Of particular interest are:

- a) Proposals from culturally centered organizations;
- b) Models that propose to serve culturally and racially diverse older adult populations; and
- c) Models that serve older adults in rural areas.

New models of service delivery to increase efficiencies and connect these high priority individuals with services are needed given the current economic climate and the rapidly increasing numbers of these older adults. Include technical assistance costs in your proposal that will help explore the use of advances in technology to enhance your services.

### **Core Home and Community-Based Services**

Core home and community-based services aim to strengthen and develop additional home and community-based services and alternatives to nursing homes and other residential services throughout Minnesota to allow people (regardless of income) to remain in their own homes for as long as possible. They complement ECS by covering some fixed costs for small non-profit providers offering ECS and additional services such as, but not limited to: home modification, socialization, companion, friendly visiting and transportation.

Core home and community-based services providers include Faith in Action, Living at Home Network, Congregational Nurse, or similar community-based programs. They are governed by a volunteer board the majority of whose members reside within the program's service area. They organize and use a combination of volunteers and paid staff to deliver nonmedical services

intended to help older adults identify and manage risks (Live Well at Home) of institutionalization so they can remain at home in the community. Organizations funded under Core Home and Community-Based Services have operating budgets of \$175,000 or less annually and serve a geographically limited area. Priority will be given to the development of new core home and community-based service providers in communities where there is a lack of affordable services available. Priority will also be given to those existing Core Home and Community-Based Service providers expanding into adjacent unserved communities. A strong community need must be clearly demonstrated throughout the proposal. Recipients of core home and community-based service funds are required to generate income by charging for services through the use of a sliding scale fee. Grantees that document the collection of fees for services in year one of their grant will receive increased funding in year two (beyond the base amount award) equal to the fee collected in year one.

### **Healthy Aging**

Support high risk older adults to stabilize their health status and maintain their independent living through opportunities for: education and training, medication management, care transitions or other programs that utilize proven evidence based or informed self-management techniques.

These programs will increase access to evidence-based health promotion and disease management interventions to prevent onset, or manage chronic conditions, and fall risk. Evidence-based disease prevention and health promotion programs reduce the need for costly medical interventions. Programs offered should assist individuals who are at-risk for hospitalization or placement in a long-term care facility or who are beginning to experience the need for home and community-based services. Programs offered can provide opportunities to improve access to long-term care decision support for individuals and their family caregivers and connect them to flexible community supports (see above) and resources to help them better manage their health status and ongoing health conditions.

### **Dementia Capable Health Care Home and Communities**

As our population ages, the state faces a particular challenge in addressing the corresponding rise in the number of individuals with Alzheimer's disease and other dementias. The rise in either Alzheimer's disease or dementia in Minnesota will bring enormous cost and burden to individuals with the disease, their families, caregivers, employers, communities, and the state.

In 2011, the Minnesota Board on Aging (MBA) released a report of the Alzheimer's Disease Working Group, which the MBA convened at the direction of the Minnesota Legislature. The report provides information on the status of Alzheimer's in Minnesota and makes recommendations for needed policy and program changes in order to prepare the state to address future increases in Minnesotans with the disease. Major themes of the report included the need for earlier and better identification of the disease and improved health care for long-term management of the disease.

The recommendations from this report are being implemented through ACT on Alzheimer's. ACT on Alzheimer's is a voluntary, state-wide collaboration of medical, academic, community, government, business, and nonprofit stakeholders across Minnesota seeking to transform the State's medical and long-term care system and its communities to better support individuals with Alzheimer's disease and their families. The strategies implemented through ACT on Alzheimer's align with the goals and recommendations outlined in National Plan to Address Alzheimer's Disease.

Minnesota now seeks to build on its success in developing the Health Care Home (HCH) model of primary care to provide exceptional primary care services to individuals with Alzheimer's disease and their families, with a special focus on the integration of primary care and community-based services. The HCH model offers better partnerships between provider, patient, and family; better continuity of care; and increased coordination between primary care and community-based services. Minnesota seeks to develop and support a model for a certified HCH that systematically screens and identifies people with dementia, uses dementia care as an organizing principle of the ongoing care of those individuals, and develops strong partnerships with community-based services to improve the quality of care and quality of life of individuals and their families.

The 2012 Minnesota Legislature made changes to the Long Term Care Consultation statutes (Minnesota Statutes, section 256B.0911, subd.3e) and the Minnesota Board on Aging statutes (Minnesota Statutes, section 256.975, subd.7) that are part of the "Long Term Care Consultation Expansion" initiative. The statutory changes create closer working partnerships between the Senior LinkAge Line®, hospitals and certified health care homes. These changes, under the direction of the Commissioner of Health and the Commissioner of Human Services, will strengthen existing relationships, create new relationships, and promote the development of standard referral protocols that identify older adults at-risk of needing long-term services and supports, are those who have current or anticipated long-term service and support needs. As a result, more individuals are being connected to the Senior LinkAge Line® and receiving Long Term Care Options Counseling and decision support, these tools help individuals make informed choices about long-term service and support options and health benefits, including exploring the most cost-effective and least restrictive setting. More information about this partnership can be found on the Minnesota Board on Aging Website <http://www.mnaging.net/en/Advisor/LTCCE.aspx>.

Projects funded under the Dementia Capable Health Care Home initiative will build upon the protocols and relationships developed through the Long Term Care Consultation Expansion to further enhance services and coordination for individuals with Alzheimer's disease and related dementias and their care partners.

A Dementia Capable Community is informed, safe and respectful of individuals with the disease, their families and caregivers' and provides supportive options that foster quality of life. Key elements of a dementia capable community include: awareness; information and education for people with dementia and their families; caregiver counseling and support groups; future

planning; wellness programs; ,meaningful engagement activities; caregiver supports; transportation; independence at home & risk reduction services; residential settings; local government planning; impairment identification & care and diagnosis; medical management & pharmacological treatment.

The following resources should be used by Responders in developing proposals under this section.

- ACT on Alzheimer's has developed extensive Alzheimer's disease curricula. Applicants will need to review specific modules for information about the latest recommendations on various aspects of dementia identification and care.
- The Minnesota Department of Health (MDH) sponsors a Learning Collaborative for HCHs. The learning collaborative provides an opportunity for HCH to exchange information and enhance understanding related to quality improvement and best practices. Review resources from past Learning Collaboratives at: <http://actonalz.org/HCHDementiaPatients.ppt> and <http://www.health.state.mn.us/healthreform/homes/collaborative/learningday2014/ldsession2014.html>

Applicants are highly encouraged to follow the development of Integrated Care System Partnerships (ICSPs), part of Minnesota's Demonstration to Integrate Care of Dual Eligibles (Dual Demonstration). Under the Dual Demonstration, the State has negotiated contract language with health plans and county based purchasing entities for new facilitated contracting arrangements for ICSPs serving Medicare and Medicaid-eligible older adults enrolled in the demonstration. These partnerships will involve providers and health plans/county based purchasing entities in integrated delivery of primary, acute and long term care services to members. ICSPs include primary, acute and long term care providers working together to integrate care delivery. Applicants are encouraged to explore participation in an ICSP arrangement and should monitor developments at <http://www.dhs.state.mn.us/dualdemo>

## B. Tasks and Deliverables

### Tasks

- Participate in bi-annual Age and Disabilities Odyssey
- Participate in lessons learned and promising practices sharing with other grantees
- Provide reports in a timely manner as set forth by the STATE
- Comply with all applicable federal, state and local laws
- Meet timelines and production parameters in proposal
- Participate in social media tools
- Identify and serve at-risk persons in the community by using the Live Well at Home Rapid Screen
- All products and services developed must meet the State of Minnesota accessibility standards and guidelines outlines in section VI.I. Accessibility Standards of this RFP.
- Dementia Capable HCH selected applicants will be required to participate in an evaluation that is developed and designed jointly with the STATE. The goals of the

evaluation will be to: 1) assess the effectiveness of the dementia capable HCHs and Partner Community Organizations in implementing protocols and permanently integrating them into systems, 2) assess the impact of the protocols on individuals and family members, for example, by tracking screening diagnostic, and care management activity at the individual level, and 3) calculate the total cost of care for individuals with dementia. The evaluation will rely on use of person-level clinical and claims data. The evaluation will lead to recommendations for further dissemination of the model and for payment methodologies that will support a Dementia Capable HCH model, including community-based supports. The evaluator will be selected by the STATE, in consultation with selected grantees, and will evaluate all selected grantees in order to assure consistency in evaluation approach

## Deliverables

- Promote and assist people in using self-directed community-based supports whether through private or public pay funds
- Increase the number of older Minnesotans using home and community-based services
- Progress in achieving goals/outcomes of project-as outlined in the project's workplan
- Improve access and control for consumers: a) via evidence of project's role in improving coordination and/or linkages across long-term services and supports in the service area, and/or b) by creating new service models that increase consumer choice and control
- Improve targeting and management of public funds for culturally and racially diverse older adult populations, older adults in rural areas and those with at-risk needs
- Improve efficiencies in use of personnel whether: a) better use of paid personnel and/or b) appropriate use of informal and quasi formal resources
- Expand the type and number of funding sources to achieve fiscal sustainability – private pay, third party contracts and/or other private/public funding. After one year, a plan for fiscal sustainability is in place
- Capital and renovation selected applicants will increase the number of affordable housing units or services, better use of existing infrastructure in service area and/or provide evidence of cost effectiveness of accessibility/safety modifications (if applicable)
- Dementia Capable HCH selected applicants will implement protocols to identify and manage Alzheimer's disease and related dementias. Protocols will be based on the [Provider Practice Tools](#) developed by ACT on Alzheimer's. These tool include Clinical Provider, Care Coordinator and Community Based Service Provider Practice Tools. Selected grantees will implement the protocols by embedding them into the HCH's Electronic Medical Record (EMR), as outlined in the [EMR Decision Support Tools Template and Guide to Implementation](#)

Protocols may be adapted to meet the needs of each applicant but at a minimum must include the following:

- A system for initial identification and diagnosis, including:
  - A systematic screening protocol for cognitive impairment for patients over age 65 that includes identification and inclusion of family caregivers

- An initial cognitive assessment protocol in response to patient failure or cognitive screening
- A complete dementia workup or referral to an Alzheimer's champion in your practice, neurologist, and neuropsychologist for individuals whose cognitive assessments fall outside the normal range
- A system for responding to a diagnosis and providing ongoing management. The protocols will be carried out through partnership between the HCH and the Partner Community Organization (see "III.B. Proposal Requirements, 1. Description of the Applicant Agency/Organization Info" for definitions of HCH and Partner Community organizations"). The System must include the following elements:
  - Identify and engage informal care partners (family and/or friends)
  - Conduct a comprehensive assessment of patient
  - Provide disease education to the patient and care partners
  - Develop a care plan based on the patient's diagnosis, needs, and goals, and incorporating interventions specific to phase of the individual's disease (i.e. mild cognitive impairment, early, middle, late). Interventions include but are not limited to:
    - Drug treatments for cognition, mood and behavioral symptoms
    - Physical activity
    - Engagement programs
    - Caregiver Respite
    - Nutrition
    - Monitor co-morbid conditions
    - Medication management
    - Ongoing disease education
    - Driving education and evaluation
    - Occupational therapy/physical therapy assessment (home safety/home modifications/adaptive or assistive devices)
    - Advanced care planning
    - Financial/Legal/Life/Long-Term Service and Support
    - Care partner education and support planning
    - Arrange for services
    - Determine frequency of visits
    - Develop a plan for communication between the team which includes patient and care partner (HCH and Partner Community Organization)
    - Partner with a Family Memory Care Consultant to provide this evidence-based intervention to appropriate family caregivers where available
    - Monitor and re-evaluate the care plan on an ongoing basis

### III. Proposal Format

Proposals must conform to all instructions, conditions, and requirements included in the RFP. Responders are expected to examine all documentation and other requirements. Failure to observe the terms and conditions in completion of the proposal are at the responder's risk and may, at the discretion of the State, result in disqualification of the proposal for nonresponsiveness. Acceptable proposals must offer all services identified in Section II - Scope of Work and agree to the contract conditions specified throughout the RFP.

#### A. Required Proposal Contents

Responses to this RFP must consist of all of the following components (See following sections for more detail on each component).

##### 1. Proposal Requirements

- a. Description of the Applicant Agency
- b. Executive Summary
- c. Impact and Need Narrative
- d. Evaluation Plan
- e. Nursing Facility Closure Preference
- f. Project Goals and Outcomes, Activities (Implementation Plan)
- g. Budget Proposal
- h. Property Income/Expense Worksheet (capital/renovation applications only)
- i. Development Cost Worksheet (capital/renovation application only)
- j. One page summary of bid information or cost estimate; include the source (capital/renovation applications only)
- k. 8 ½ x 11 reduced scale drawing from which room sizes and other building details may be determines (capital/renovation applications only)
- l. 8 ½ x 11 reduced scale drawing from which room sizes and other building details may be determines (capital/renovation applications only)

##### 2. Innovative Concepts (If Applicable)

##### 3. Required Statements

- a. Responder Information and Declarations
- b. Exceptions to Terms and Conditions
- c. Affidavit of Noncollusion
- d. Trade Secret/Confidential Data Notification
- e. Submission of Certified Financial Audit, IRS Form 990, or Most Recent Board-Reviewed Financial Statements
- f. Disclosure of Funding Form



- g. Affirmative Action Data Page
- h. Certification and Restriction on Lobbying
- i. Professional Responsibility
- j. Certificate of Health Care Home

## B. Proposal Requirements

Applicants must submit one online proposal through the Live Well at Home Grant Application Service Web site located at <http://mn.gov/dhs/live-well> and mail or hand deliver one printed original with required signatures from the Live Well at Home Grant Application Service Web site. The following will be considered minimum requirements of the proposal with emphasis on completeness and clarity of content.

**1. Description of the Applicant Agency/Organization Info (125 points):** *Maximum 5,000 characters including spaces. Memorandum (a) of understanding is excluded in the maximum character allowance for this section.* This section must include information on the programs and activities of the agency, the number of people served, geographic area served, staff experience, and/or programmatic accomplishments. Include reasons why your organization is capable to effectively complete the services outlined in the RFP. Include a brief history of your organization and all strengths that you consider are an asset to your program. The responder should demonstrate the length, depth, an applicability of all prior experience in providing the requested services. The responder should also demonstrate the skill and experience of lead staff and designate a project manager with experience in planning and providing the proposed services.

Identify partners and their individual commitments to the proposed project. For each identified partner provide a customized Memorandum of Understanding (MOU) signed by each partner. The MOU clearly defines and documents the partner's role, resources and responsibilities in the project and serves as a collaboration charter. Document the resources outlined in the MOU(s) in the budget and responsibilities in the work plan that each partner will contribute to the proposed project.

To receive a maximum score, applicants should involve at least two of the following groups as partners in their proposal: an area agency on aging, a county public health nursing, human or social service organization, a healthcare organization, a quasi-formal or other service provider, and/or local not-for-profit or for-profit business (e.g., an employer, service company, retailer or other commercial venture, educational institution, unit of government, transportation agency or trade association).

Applicant will upload the customized MOUs to the Grant Application Service Center > Proposal Requirements > Additional Files. The State does not provide an MOU template for applicants to complete and upload.

### **Dementia-Capable HCH**

In addition to the proposal requirements for “Description of Applicant Agency” set forth above, Dementia Capable HCH applicants must demonstrate a formal partnership between a certified HCH and at least one Partner Community Organization. A Partner Community Organization is an organization other than a primary care clinic that has the appropriate skills and connections to coordinate and connect to or provide the identified community services of the person with Alzheimer’s disease or related dementia and their care partners, in partnership with a HCH.

The application must include the following:

- Memorandum/a of Understanding (MOU) developed jointly by the HCH and the Partner Community Organization/s and signed by each partner, describing how the requirements in this RFP, including implementation of the protocols to identify and manage Alzheimer’s disease and related dementias will be carried out by the partners; AND
- A copy of the HCH’s most recent certification or recertification letter from the Department of Health; OR
- A copy of the letter of intent to certify that it was submitted to the Department of Health AND the anticipated dates of the clinic’s site visit with the Department of Health. In this instance, DHS will verify the anticipated site visit date with the Department of Health. The HCH must submit a copy of their certification letter from the Department of Health to DHS before DHS will enter into a contract resulting from this RFP;

Applicant will upload the MOUs and the evidence of health care home certification to the Grant Application Service Center > Proposal Requirements > Additional Files

Applicants should describe previous experiences with similar initiatives. Describe the involvement of clinic administration, medical staff, care coordinators, and Partner Community Organization/s in the development of the proposal. Provide a description of clinic’s current services, including its current or proposed HCH model, a description of each Partner Community Organization’s current services, and history of partnership between the HCH and Partner Community Organization/s. Provide a description of clinic’s patient panel including numbers and percent of older adults (65+) served and number of people with dementia served. Describe current efforts to screen, identify, diagnose, and treat/manage dementia.

**2. Executive Summary (5 points):** *Maximum 1,500 characters including spaces.* This component of the proposal should demonstrate the responder's understanding of the services requested in this RFP and any problems anticipated in accomplishing the work. Applicant should write a brief description of the proposed project, including: the goal, the list of objectives and products/services to be developed. The Executive Summary should also clearly describe or outline the Responder’s overall design of the project in response to achieving the purpose and deliverables as defined in this RFP. Specifically, the proposal should demonstrate the Responder's familiarity with the project elements, its solutions to the problems presented

and knowledge of the requested services. The executive summary from applicants awarded a grant will be posted on the Department of Human Services public web page.

**3. Impact/Need Narrative (250 points):** *Maximum 7,500 characters including spaces.* In this section, applicants should clearly describe the need for the proposed project in their community. This description should include an overview of the overall project design that 1) identifies the level of need for these proposed services or system change, 2) identifies who will be targeted for services by the project, 3) cites the methods or information used to determine this need, and 4) describes how the project will address the need. Applicants should also include barriers or foreseen challenges; and discuss whether the program and activities will have a local, regional or statewide impact, how many will be served and whether it will serve low- and moderate-income individuals and families. Include a description of the referral system(s) used by the program to reach the target population. If submitting a LTSS proposal, describe the strategic changes this project will make in the current long-term services and support system: either by how will the project change the long-term services and support system or describe the intended long-term services and support development outcomes.

**4. Evaluation plan (125 points):** *Maximum 8,000 characters including spaces.* The State is committed to funding services that produce a measurable result for the people of Minnesota.

A successful Responder must develop indicators of the success and effectiveness of the program and be able to measure and evaluate them to determine outcomes. This section should describe the methods and criteria that will be used to measure whether the project goals and objectives have been achieved. Program and financial sustainability must be explicitly addressed as one indicator of the proposed evaluation. List surveys or other assessment tools you will propose to use to assess and measure pre- and post-participant outcomes and how results will be summarized.

In this section describe what lasting effects will be produced by the project and how your organization will continue the proposed project after the ends. Discuss the relationship with other organizations that you have or will develop further that will help maintain the proposed project long- term.

Projects are assumed to decrease reliance on grant funding after the initial grant period. This section must also describe how the project will become financially sustainable and when sustainability will be achieved. Demonstrate a transition to self-sufficiency and reflect the transition clearly in the budget.

Clearly articulate the true unit cost for each service and establish a fee schedule for all persons served by the project including individuals who are not income eligible for public programs that includes a conforming sliding scale fee schedule for persons not able to pay the full cost of the service. When describing the fee schedule, keep in mind the different people served and the funding sources available to cover the costs, such as private pay, Older American's Act

-Title III and Medicaid waivers. Upload fee schedule under additional files on the Proposal Requirements Tab.

Applicants providing ECS must indicate they intend to receive payment from appropriate sources for individuals eligible for publicly funded programs and have a fee schedule in place. Applications that include ECS but do not provide this information will have their budgets adjusted prior to contract if selected.

Coordinate with existing informal, quasi-formal and formal care systems in the community as well as programs funded by the state, federal, tribal and other sources.

#### Evaluation of Dementia Capable HCH Partnership

Selected Dementia Capable HCH applicants will be required to participate in an evaluation that is developed and designed jointly with the STATE and other selected grantees. The goals of the evaluation will be: 1) to assess the effectiveness of HCHs and Partner Community Organization/s in implementing protocols and permanently integrating them into systems, 2) to assess the impact of the protocols on individuals and family members, for example, by tracking screening, diagnostic, and care management activity at the individual level, and 3) to calculate the total cost of care for individuals with dementia. The evaluation will rely on use of person-level clinical and claims data. The evaluation will lead to recommendations for further dissemination of the model and for payment methodologies to support a Dementia Capable HCH model, including community-based supports. The evaluator will be selected by the STATE, in consultation with selected grantees, and will evaluate all selected grantees in order to assure consistency in evaluation approach.

In this section, applicants should:

- Propose for the measures that will be most important to include in the evaluation
- Describe your ability to produce person-level clinical and claims data for an outside evaluator
- Describe any experiences with similar evaluation efforts
- Describe the lasting effects that will be produced by the project and how your organization will continue the proposed project after it ends.

**5. Nursing Facility Closure Preference (20 points):** Applicants are encouraged to provide the name of one nursing facility in the project's service area that has or is permanently closing nursing facility beds under [Minnesota Statutes, section 256.9754, subd.5](#) after January 1, 2014. Applicants that cite a nursing facility closure will illustrate throughout the proposal requirements how they are working with the cited nursing facility to strengthen and integrate their community's home and community-based service capacity for people at-risk of long-term nursing home use and or spending down into Medical Assistance will receive maximum points. One way to do this is to develop an MOU between the two organizations and upload it to the grant application.

**6. Project Goals, Outcomes, Activities (Implementation Plan) (125 points):** *Maximum 4,000 characters including spaces.* This section should clearly define and discuss the goals and

objectives of the project. Propose and describe specific milestones and outcomes that will be used to demonstrate the program's effectiveness.

All proposals submitted under this RFP must address, in sufficient detail, how the Responder will fulfill the expected outcomes and features set forth above. Simply repeating the outcomes and features and asserting that they will be performed is not an acceptable response. This section should detail how the project will be carried out in an effective and efficient manner, including who will be involved, what resources are required, target dates for project activities and the timeframe for completion. Provide a description of the program design you propose to implement.

#### Protocols for Dementia Capable HCH

In addition to the proposal requirements for "Project Goals, Outcomes, Activities" set forth above, Dementia Capable HCH applicants must describe the protocols that the applicant proposes to implement. Describe the staff roles and responsibilities for implementing the project, including staff roles in the HCH and the Partner Community Organization/s.

The application must also demonstrate:

- A staffing plan for both the HCH and the Partner Community Organization/s that will support the protocols
- A training plan to increase the capacity of the team (HCH and Partner Community Organization/s) to identify and respond to Alzheimer's disease and related dementias and implement dementia protocols. Applicants are encouraged to seek out dementia specific training for care team members that is consistent with the Alzheimers Disease Curricula, entitled "Dementia as an organizing principal of care." Training should include the following elements:
  - Communication techniques for use with patients with dementia and their care partners
  - Skills in assessing patients with dementia
  - Additional care coordination skills needed for monitoring and re-evaluation the effectiveness of the care plan
  - The role of the care partner and identifying when a care partner is required for effective support of the patient

**7. Budget proposal (300 points):** This section should specify the grant amount requested and detail all expenses for the proposed project. Describe and explain what the estimated costs pay for. Identify what other ancillary services are being provided that have costs with them and which components are essential to delivering minimum quality services. Include a budget narrative for the applicant and each subcontracting agency. See pages 22-25 of the RFP for line by line instructions on how to complete the budget. Explain the proposed use of the grant funds and matching funds. A fifty percent match is required. This is a dollar-for-dollar match up to the \$250,000 maximum grant amount requested. Your explanation should provide sufficient detail to justify the total amount budgeted in each category. The program budget must be complete and reasonable, must link to the proposed program activities, and must specify how the amounts for each budget item were determined. Five percent of the total

budget may be allocated to cover evaluation costs. (Note: Dementia Capable HCH applicants should not include evaluation costs in their grant budget. Applicants should include sufficient resources to participate in and provide person-level data for the evaluation in their match budget, such as staff hours, system costs, or other related costs). Responders are encouraged to apply for only the amount needed for their proposed programs. The total available funds will not necessarily be divided equally, nor will selected applicants be guaranteed the entire amount requested. Budget proposals will be judged on efficient use of funds (that is, funds are being spent on direct services versus administrative costs, as detailed in their budget proposal) and overall cost-effectiveness and likelihood of becoming financially sustainable by the end of the grant period.

## Instructions for Preparing Budgets

### Direct Costs

A “direct cost” is any cost that can be specifically identified with a particular project, program, or activity or that can be directly assigned to such activities relatively easily and with a high degree of accuracy. Direct costs include, but are not limited to, salaries, travel, equipment, and supplies directly benefitting the grant-supported project of activity.

### Personnel

Cost of individual staff salaries, wages and fringe benefits of applicant organization.

*Budget justification:* Specify the key staff by their first and last name, their titles, brief summary of project related duties, and their commitments to the project, based on full-time equivalent. Do not group staff together. Enter each individual separately. Provide a list of the elements that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance. Explain the formula or rationale used to compute the cost of the fringe benefits listed in the budget proposed. Individuals who are not directly employed by the applicant organization but work on the grant should be listed under the contracts line item. Consultant costs or professional fees should be included under the “Other” line item.

### Travel

Cost of local and out of town travel for staff of the project.

*Budget justification:* Reimbursement to applicants for travel and subsistence expenses is to be made consistent with the current “Commissioner’s Plan” as promulgated by the Commissioner of Minnesota Management and Budget. The Commissioner’s Plan states the current reimbursement rates for travel and subsistence expenses in Chapter 15: Expense Reimbursement.

Travel rates must not exceed State of Minnesota rates.

- Lodging: Actual and reasonable costs
- Mileage: Is based on Federal IRS mileage reimbursement rate (2015).  
Mileage allowance may not exceed the State maximum, currently, 57.5 cents per mile for business miles driven. 23 cents per mile for medical or moving purposes. 14 cents

per mile driven in service of charitable organizations. Include the total number of trips, destinations, purpose, length of stay, transportation cost (including mileage rates).

- Meals: In State: Breakfast-\$11.00, Lunch-\$13.00, Dinner-\$20.00

All out-of-state travel and lodging requires prior State approval if State funds are used. Do not include travel expenses for consultant or applicant's clients under travel, expenses incurred for clients should be listed under other.

### **Communication and Utilities**

Cost of utilities, postage and communications.

*Budget justification:* Itemize and estimate anticipated charges for the project. Explain anticipated charges for Internet access, telephone (including cell phones) and fax services including the number of phone lines. Postage may include the cost of mass mailings or miscellaneous project mail. Detail the number of pieces, the postage per item cost and reason. For example; 100 letters x .49 = \$49. Follow up letters to caregivers.

### **Building Space**

Space rental

*Budget justification:* Specify whether the space occupied is rented or owned and whether or not the costs include utilities and other occupancy related charges. Include the number of square feet and the percentage of time used for grant purposes. For example; 1500 square feet x \$25/ft. x 50%=\$18,750.

### **Equipment**

The costs of all equipment to be acquired by the project. For all applicants "equipment" is non expendable tangible personal property having a useful life of more than one year and acquisition cost of \$1,000 or more per unit. If the item does not meet the \$1,000 threshold, include it in your budget under supplies.

*Budget justification:* Equipment to be purchased with State funds must be justified as necessary for the conduct of the project. The equipment must be used for project related functions; the equipment, or a reasonable facsimile, must not be otherwise available to the applicant or its sub-grantees. An explanation including the cost of purchases, cost and terms of all rental agreements and purpose of equipment should be explained. The justification also must contain plans for the use or disposal of the equipment after the project ends.

### **Supplies**

Costs of all tangible expendable personal property (supplies) other than those included in equipment. Supplies include consumable commodities such as paper stock, pencils, print cartridges, photocopying, etc.

*Budget justification:* Provide general description of types of items included. Explanation should indicate what items are included and how costs are estimated. Unallowable cost: “Printing,” is utilizing a professional printing service to make a color or black and white digital printing for high quality brochures and professional looking manuals. Printing is not an allowable line item cost. However, photocopying, a copy made on a copying machine and used in daily office operations is allowable.

### **Volunteers**

Costs related to the management of volunteers such as recruitment, retention and recognition.

*Budget justification:* Enter volunteer expenses related to food/beverages, volunteer recognition events, recognition items, and cost of background checks, volunteer insurance and other related volunteer expenses.

### **Contracts**

Costs of all contracts, including procurement contracts (except those, which belong on other lines such as equipment, supplies etc.) and any contracts with organizations or individuals for the provision of technical assistance and other services.

*Budget justification:* For each line item listed under the heading of contracts, indicate the name of the organization, the purpose of the contract, and the dollar amount. If the name of the contractor, scope of work, and costs are not available or have not been negotiated, indicate when this information will be available. If necessary, attach an additional page for hard copy submissions or outline the detail within the “contracts” justification section.

### **Other**

Costs not included in the above line items. Such costs, where applicable, may include but are not limited to: insurance, medical and dental costs; non-contractual fees and travel paid directly to individual consultants; equipment rentals/lease; computer use; training and staff development costs (i.e. registration fees).

*Budget justification:* Provide an explanation for items in this category. Staff development/conferences - Describe the types of activities for staff development costs for each (e.g. workshops, training, seminars, etc.) Specific costs for overnight travel and lodging should be explained if applicable. Client Transportation: Provide formula (including the number of units e.g., tokens, costs per unit, number of recipients, and months of service) for each specific area.

### **Administrative Overhead Costs**

An “administrative overhead cost” is a cost for common or joint objectives that, therefore, cannot be readily identified with an individual, project, program or organizational activity. They generally include facilities operation and maintenance costs, depreciation and administrative expenses. Administrative overhead cost should not be requested in applications for capital and renovation grants. When requesting administrative overhead costs, applicants/grantees should budget administrative overhead cost under the “other”



category at a rate up to six percent of modified total of direct costs. Applicants/grantees need to provide detail in the “other” line item under the budget justification explaining costs associated with the request.

### Match

Match is a statutorily specified percentage, specified as a fixed or minimum percentage of non-State/Federal participation in allowable program or project costs. Match must be contributed by a recipient in order to be eligible for State/Federal funding or a not-to exceed percentage of State participation. The source and amount of costs and/or the value of third – party in-kind contributions proposed by the applicant to meet a matching requirement must be identified in the application budget. Matching may not be used to match another federal or state grant; it may only be used as match one time. Required match for Live Well at Home grants is dollar for dollar or 50 percent of total budget.

The following example shows how much “Match” each type of project would need to demonstrate if they were awarded \$50,000 in State Funds.

	State Funds Budget (Grant Amount)	Local Funds Budget (Match Amount)	Formula Used to Calculate Match Amount	Total Project Budget
LWAH (50% Match)	\$50,000 50%	\$50,000 50%	State Funds Amount x 1	\$100,000 100%

**Allowable Match:** Cash, loans, donations, local tax revenues, the actual value of dedicated staff/contractor time, volunteer time, the actual value of in-kind donations and other local match including the grantee’s share of construction costs, personnel time given to project, consulting fees, use of existing equipment or materials/supplies donated. According to Independent Sector, the estimated dollar value of volunteer time in Minnesota is \$24.31 per hour.

Cash match is either the applicant organization’s funds (general revenue) or cash donations from non-state third parties (i.e. partner organizations), or by non-state grants. In-kind match contributions are from the applicant organization or a “third party.” In-kind match is typically in the form of the value of personnel, goods, and services including direct and indirect costs.

**Unallowable Match:** State funds, means tested direct services payments (e.g. Alternative Care (AC), Community Alternative Care (CAC), Community Alternatives for Disabled Individuals (CADI), Developmentally Disabled (DD), Elderly Waiver (EW), and Brain Injury (BI) and sliding scale fees or donations made for services provided as a result of this grant do not qualify as match funding.

## C. Innovative Concepts

The detailed needs and requirements for Responders in this RFP are not intended to limit the responder's creativity in preparing a proposal. Responders may submit innovative ideas, new concepts, partnership arrangements, and optional features in response to this RFP. However, responder must still address the needs and requirements stated in this RFP. Submitting only a different idea instead of addressing the needs and requirements stated in the RFP will result in the responder's proposal being found nonresponsive and receiving no further consideration.

Any additional innovative concept submitted by a responder will only be reviewed after the required needs stated in the RFP have been addressed. The State will review such additional features to determine whether or not, in the State's sole discretion, the features enhance the rest of the responder's proposal. If, at the State's sole discretion, it is determined that the additional innovative concepts would enhance the rest of the responder's proposal, the State may award bonus points to the responder's proposal in accordance with the evaluation process of this RFP.

## D. Required Statements

Complete the correlating forms found in [eDocs](#) by clicking the links below and submit them as the "Required Statements" section of your proposal. You must use the current forms found in eDocs. Failure to use the most current forms found in eDocs in completion of the proposal are at the responder's risk and may, at the discretion of the State, result in disqualification of the proposal for nonresponsiveness.

**1. Responder Information and Declarations ([Responder Information/Declarations Form DHS-7020-ENG](#)):** Complete and submit the attached "Responder Information and Declarations" form. If you are required to submit additional information as a result of the declarations, include the additional information as part of this form.

**2. Exceptions to RFP Terms ([Exceptions to Terms and Conditions Form- DHS-7019-ENG](#)):** The contents of this RFP and the proposal(s) of the successful responder(s) may become part of the final contract if a contract is awarded. Each responder's proposal must include a statement of acceptance of all terms and conditions stated within this RFP or provide a detailed statement of exception for each item excepted by the responder. **Responders who object to any condition of this RFP must note the objection on the attached "Exceptions to RFP Terms" form. If a responder has no objections to any terms or conditions, the responder should write "None" on the form.**

Responder should be aware of the State's standard contract terms and conditions in preparing its response. A sample State of Minnesota, Department of Human Services, Grant Contract is attached in the Appendix for your reference. Much of the language reflected in the contract is required by statute. If you take exception to any of the terms, conditions or language in the

contract, you must indicate those exceptions in your response to the RFP. Only those exceptions indicated in your response to the RFP will be available for discussion or negotiation.

Responders are cautioned that any exceptions to the terms of the standard State contract which give the responder a material advantage over other responders may result in the responder's proposal being declared nonresponsive. Proposals being declared nonresponsive will receive no further consideration for award of the Contract. Also, proposals that take blanket exception to all or substantially all boilerplate contract provisions will be considered nonresponsive proposals and rejected from further consideration for contract award.

**3. Affidavit of Noncollusion ([Affidavit of Noncollusion Form- DHS-7021](#)):** Each responder must complete and submit the attached "Affidavit of Noncollusion" form.

**4. Trade Secret/Confidential Data Notification ([Trade Secret/Confidential Data Notice Form- DHS-7015-ENG](#)):** All materials submitted in response to this RFP will become property of the State and will become public record in accordance with Minnesota Statutes, section 13.591, after the evaluation process is completed. Pursuant to the statute, completion of the evaluation process occurs when the government entity has completed negotiating the contract with the successful responder. If a contract is awarded to the Responder, the State must have the right to use or disclose the trade secret data to the extent otherwise provided in the grant contract or by law.

If the responder submits information in response to this RFP that it believes to be trade secret/confidential materials, as defined by the Minnesota Government Data Practices Act, Minnesota Statutes, section 13.37, and the responder does not want such data used or disclosed for any purpose other than the evaluation of this proposal, the responder must:

a. clearly mark every page of trade secret materials in its proposal at the time the proposal is submitted with the words "TRADE SECRET" or "CONFIDENTIAL" in capitalized, underlined and bolded type that is at least 20 pt.; the State does not assume liability for the use or disclosure of unmarked or unclearly marked trade secret/confidential data;

b. fill out and submit the attached "Trade Secret/Confidential Information Notification Form," specifying the pages of the proposal which are to be restricted and justifying the trade secret designation for each item. If no material is being designated as protected, a statement of "None" should be listed on the form;

c. satisfy the burden to justify any claim of trade secret/confidential information. In order for a trade secret claim to be considered by the State, detailed justification that satisfies the statutory elements of Minnesota Statutes, section and the factors discussed in *Prairie Island Indian Community v. Minnesota Dept. of Public Safety*, 658 N.W.2d 876, 884-89 (Minn.App.2003) must be provided. Use of generic trade secret language encompassing substantial portions of the proposal or simple assertions of trade secret interest without substantive explanation of the basis therefore will be regarded as nonresponsive requests for

trade secret exception and will not be considered by the State in the event of a data request is received for proposal information; and

d. defend any action seeking release of the materials it believes to be trade secret and/or confidential, and indemnify and hold harmless the State, its agents and employees, from any judgments awarded against the State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the State's award of a contract. In submitting a response to this RFP, the responder agrees that this indemnification survives as long as the trade secret materials are in the possession of the State. The State is required to keep all the basic documents related to its contracts, including selected responses to RFPs, for a minimum of six years after the end of the contract. Non-selected RFP proposals will be kept by the State for a minimum of one year after the award of a contract, and could potentially be kept for much longer.

The State reserves the right to reject a claim if it determines responder has not met the burden of establishing that the information constitutes a trade secret or is confidential. The State will not consider prices or costs submitted by the responder to be trade secret materials. Any decision by the State to disclose information designated by the responder as trade secret/confidential will be made consistent with the Minnesota Government Data Practices Act and other relevant laws and regulations. If certain information is found to constitute a trade secret/confidential, the remainder of the Proposal will become public; only the trade secret/confidential information will be removed and remain nonpublic.

The State also retains the right to use any or all system ideas presented in any proposal received in response to this RFP unless the responder presents a positive statement of objection in the proposal. Exceptions to such responder objections include: (1) public data, (2) ideas which were known to the State before submission of such proposal, or (3) ideas which properly became known to the State thereafter through other sources or through acceptance of the responder's proposal.

**5. Submission of Certified Financial Audit, IRS Form 990, or Most Recent Board-Reviewed Financial Statements:** The successful responder must be fiscally responsible. Therefore, responders must include in their proposals sufficient financial documentation to establish their financial stability.

Depending on the responder's annual income or how long the responder has been in business, a responder is required to submit either a certified financial audit, IRS Form 990, or most recent board-reviewed financial statements. A certified financial audit is a review of an organization's financial statements, fiscal policies and control procedures by an independent third party to determine if the statements fairly represent the organization's financial position and if organizational procedures are in accordance with Generally Accepted Accounting Principles (GAAP). Minnesota nonprofit organizations are required to have a certified financial audit completed for any fiscal year in which they have total revenue of more than \$750,000. An IRS Form 990 is a federal tax return for nonprofit organizations. Nonprofit organizations that are

recognized as exempt from federal income tax must file a Form 990 or Form 990 EZ if it has averaged more than \$25,000 in annual gross receipts over the past three tax years.

Responders must submit financial information as outlined below with their proposal:

- a. Responders with an annual income of under \$25,000 or who have not been in existence long enough to have an audit or completed IRS Form 990 should submit their most recent board-reviewed financial statements.
- b. Responders with total annual revenue of under \$750,000 should submit their most recent IRS Form 990.
- c. Grant applicants with total annual revenue of over \$750,000 should submit their most recent certified financial audit.

Responders may also include documentations of cash reserves to carry you through shortages or delays in receipt of revenue, and/or other documents sufficient to substantiate responsible fiscal management. In the event a responder is either substantially or wholly owned by another corporate entity, the proposal must also include the most recent detailed financial report of the parent organization, and a written guarantee by the parent organization that it will unconditionally guarantee performance by the responder in each and every term, covenant, and condition of such contract as may be executed by the parties. Please also include information about any pending major accusations that could affect your financial stability.

If the responder is a county government or a multi-county human services agency that has 1) had an audit in the last year by the State Auditor or an outside auditing firm or 2) meets the requirements of the Single Audit Act, the responder is not required to submit financial statements. However, the State reserves the right to request any financial information to assure itself of a county's financial status.

The information collected from these inquiries will be used in the State's determination of the award of the contract. It may be shared with other persons within the Minnesota Department of Human Services who may be involved in the decision-making process, and/or with other persons as authorized by law. If you choose not to provide the requested information, your organization's proposal will found nonresponsive and given no further consideration. The State reserves the right to request any additional information to assure itself of a responder's financial reliability.

#### **6. Disclosure of Funding Form ([Disclosure of Funding Form- DHS-7018-ENG](#)):**

Per the Federal Funding Accountability and Transparency Act of 2006 "Transparency Act" or "FFATA" (Public Law 109-282), all entities and organizations receiving federal funds are required to report full disclosure of funding (United States Code, title 31, chapter 61, section 6101). The purpose of FFATA is to provide every American with the ability to hold the

government accountable for each spending decision. The end result is to reduce wasteful spending in the government. The FFATA legislation requires information on federal awards to be made available to the public through a single, searchable website. Federal awards include grants, sub-grants, loans, awards, and delivery orders.

In order to comply with the federal statute, the Minnesota Department of Human Services is required to obtain and report by the grantee's Data Universal Numbering System (DUNS) number and determine if the grantee meets specific requirement which would require additional reporting items and to collect additional information on executive compensation if required. In order to comply with federal law and to collect this information, responders are required to fill out the Disclosure of Funding Form and submit it with their response. The form requires responders to provide their Data Universal Numbering System (DUNS) number. The Data Universal Numbering System (DUNS) number is the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. If a responder does not already have a DUNS number, a number may be obtained from the D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>). The responder must have a DUNS number before their response is submitted.

**7. Human Rights Compliance ([Affirmative Action Data Page- DHS-7016-ENG](#)):** For all contracts estimated to be in excess of \$100,000, Responders are required to complete and submit the attached "Affirmative Action Data" page. As required by Minnesota Rules, part 5000.3600, "It is hereby agreed between the parties that Minnesota Statutes, section 363A.36 and Minnesota Rules, parts 5000.3400 - 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it. A copy of Minnesota Statutes, section 363A.36 and Minnesota Rules, parts 5000.3400 - 5000.3600 are available upon request from the contracting agency."

**8. Certification Regarding Lobbying ([Certificate Regarding Lobbying Form- DHS-7017-ENG](#)):** For all contracts estimated to be in excess of \$100,000, Responders are required to complete and submit the attached "Certification Regarding Lobbying" page. Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore the responder must complete and submit the attached "Certification Regarding Lobbying" form.

**9. Professional Responsibility:** It is crucial that the State locate reliable grantees to serve our clients. The successful responder must be professionally responsible. Therefore, responders must include in their proposals satisfactory information regarding their professional responsibility.

Professional responsibility information includes providing information concerning any complaints filed with or by professional and/or state or federal licensing/regulatory organizations within the past six years against your organization or its employees relating to the provision of services. If such complaints exist, please include the date of the complaint(s), the nature of the complaint(s), and the resolution/status of the complaint(s), including any disciplinary actions taken.

All proposals must also include information about pending litigation and/or litigation resolved within the past two years that relates to the provision of services by your organization and/or its employees. If such litigation exists, please include the date of the lawsuit, nature of the lawsuit, and the dollar amount being requested as damages, and if resolved, what the resolution was (e.g. settled, dismissed, withdrawn by plaintiff, verdict for plaintiff with \$x damages awarded, verdict for responder, etc.).

Responder should also submit information which demonstrates recognition of their professional responsibility. This may include awards, certifications, and/or professional memberships.

The information collected from these inquiries will be used in the State's determination of the award of the contract. It may be shared with other persons within the Minnesota Department of Human Services who may be involved in the decision-making process, and/or with other persons as authorized by law. You are not required to provide any of the above information. However, if you choose not to provide the requested information, your organization's proposal may be found nonresponsive and given no further consideration. The State reserves the right to request any additional information to assure itself of a responder's professional status.

**10. Health Care Home Certificate:** For all Dementia Capable HCH contracts, Responders are required to submit a certificate of HCH from the Commissioner of the Minnesota Department of Health. There is no eDoc document to complete. Applicant will upload the certificate of HCH to their online application through the Grant Application Service Center > Proposal Requirements > Additional Files.

## IV. RFP Process

### A. Responders' Conference

A Responders' Conference will be held on Thursday, February 19, 2015 at 9:30 a.m. Central Time via web streaming. The conference will serve as an opportunity for responders to ask specific questions of State staff concerning the project. Attendance at the Responders' Conference is not mandatory but is recommended. Responders may attend via conference call (contact the State contact for this RFP for more information about attending by conference call). Oral answers given at the conference will be non-binding. Written responses to questions asked via web streaming will be sent to all identified prospective responders after the conference.

#### **Pre-registration is required**

Each person needs to register. Registration closes at 5:00 p.m. on the Monday prior to the session. By registering, you understand that the session will be videotaped with the possibility of your visual and audio likeness being recorded for reproduction and distribution.

## B. Responders' Questions

Responders' questions regarding this RFP must be submitted in writing prior to 4:00 p.m. Central Time on March 13, 2015. All questions must be addressed to:

Request for Proposal Response  
Attention: Jacqueline Peichel  
Aging and Adult Services Division  
Department of Human Services  
PO Box 64976  
St. Paul, MN 55164-0976  
Phone (651) 431 - 2583

Questions may also be e-mailed to [Jacqueline.s.peichel@state.mn.us](mailto:Jacqueline.s.peichel@state.mn.us)

Other personnel are NOT authorized to discuss this RFP with responders before the proposal submission deadline. **Contact regarding this RFP with any State personnel not listed above could result in disqualification.** The State will not be held responsible for oral responses to responders.

Questions will be addressed in writing and distributed to all identified prospective responders via the Live Well at Home Grant site. Every attempt will be made to provide answers timely, with the intent that they are sent no later than March 23, 2015.

### Technical Assistance

There are a number of potential sources of technical assistance (TA) for persons developing Live Well at Home proposals. The Eldercare Development Partnership (EDP) can provide valuable information about service gaps, existing funding streams and current programs as well as suggestions concerning program concepts and application strategies.

EDP is a state-funded program to provide TA to local providers to develop and implement service delivery models in line with the State's long-term services and supports policy directions. EDPs have a specific responsibility to assist and advise interested parties with Live Well at Home applications.

Northeast EDP (Aitkin, Carlton, Cook, Itasca, Koochiching, Lake, St. Louis)	Barb Caskey 218.722.5545 <a href="mailto:Bcaskey@ardc.org">Bcaskey@ardc.org</a>
Central EDP (Benton, Cass, Chisago, Crow Wing, Isanti, Kanabec, Mille Lacs, Morrison, Pine, Sherburne, Stearns, Todd, Wadena, Wright)	Kathleen Gilbride 320.253.9349 <a href="mailto:Kathy.gilbride@cmcoa.org">Kathy.gilbride@cmcoa.org</a>



Northwest EDP (Becker, Beltrami, Clay, Clearwater, Douglas, Grant, Hubbard, Kittson, Lake of the Woods, Mahnomen, Marshall, Norman, Otter Tail, Pennington, Polk, Pope, Red Lake, Roseau, Stevens, Traverse, Wilkin)	Judi Frye 218.371.0270 <a href="mailto:judi@nwrdc.org">judi@nwrdc.org</a>
Metro EDP (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington)	Nan Just 651.917.4632 <a href="mailto:njust@tcaging.org">njust@tcaging.org</a>
Southwest EDP (Big Stone, Blue Earth, Brown, Chippewa, Cottonwood, Faribault, Jackson, Kandiyohi, Lac Qui Parle, Le Sueur, Lincoln, Lyon, Martin, McLeod, Meeker, Murray, Nicollet, Nobles, Pipestone, Redwood, Renville, Rock, Sibley, Swift, Waseca, Watonwan, Yellow Medicine)	Elaine Spain <a href="mailto:espain@rndc.org">espain@rndc.org</a> (507) 389-8860
Southeastern EDP (Dodge, Fillmore, Freeborn, Goodhue, Houston, Mower, Olmsted, Rice, Steele, Wabasha, Winona)	Dan Conway 507.288.6944 <a href="mailto:dan@semaaarochestermn.org">dan@semaaarochestermn.org</a>

## C. Proposal Submission

Applicants must submit an online proposal through the Live Well at Home Grants application service website located at <http://www.mn.gov/dhs/live-well> and mail or hand deliver one (1) printed original application with required signatures from the Live Well at Home Grants application service website. Both the online and mailed or hand delivered printed original must be physically received (not postmarked) by 4:00 p.m. Central Time on March 27, 2015 to be considered. Late proposals will not be considered and will be returned unopened to the submitting party. Faxed or e-mailed proposals will not be accepted.

The mailed or hand delivered proposal printed from the online Live Well at Home application site must be submitted in a single sealed package or container. Clearly label the original "Proposal – Original."

The above-referenced packages and all correspondence related to this RFP must be delivered to:

Attention: Jacqueline Peichel  
Aging and Adult Services Division  
Department of Human Services  
444 Lafayette Road N.  
St. Paul, MN 55155

It is solely the responsibility of each responder to assure that their proposal is delivered at the specific place, in the specific format, and prior to the deadline for submission. **Failure to abide**

by these instructions for submitting proposals may result in the disqualification of any non-complying proposal.

## **V. Proposal Evaluation and Selection**

### **A. Overview of Evaluation Methodology**

1. All responsive proposals received by the deadline will be evaluated by the State. Proposals will be evaluated on “best value” as specified below, using a 1000 point scale. The evaluation will be conducted in three phases:

- a. Phase I      Required Statements Review
- b. Phase II     Evaluation of Proposal Requirements
- c. Phase III    Selection of the Successful Responder(s)

2. During the evaluation process, all information concerning the proposals submitted, except identity, address, and the amount requested by responder, will remain non-public and will not be disclosed to anyone whose official duties do not require such knowledge.

3. Nonselection of any proposals will mean that either another proposal(s) was determined to be more advantageous to the State or that the State exercised the right to reject any or all proposals. At its discretion, the State may perform an appropriate cost and pricing analysis of a responder's proposal, including an audit of the reasonableness of any proposal.

### **B. Evaluation Team**

1. An evaluation team will be selected to evaluate responder proposals.

2. State and professional staff, other than the evaluation team, may also assist in the evaluation process. This assistance could include, but is not limited to, the initial mandatory requirements review, contacting of references, or answering technical questions from evaluators.

3. The State reserves the right to alter the composition of the evaluation team and their specific responsibilities.

### **C. Evaluation Phases**

At any time during the evaluation phases, the State may, at the State’s discretion, contact a responder to (1) provide further or missing information or clarification of their proposal, (2) provide an oral presentation of their proposal, or (3) obtain the opportunity to interview the proposed key personnel. Reference checks may also be made at this time. However, there is

no guarantee that the State will look for information or clarification outside of the submitted written proposal. Therefore, it is important that the responder ensure that all sections of the proposal have been completed to avoid the possibility of failing an evaluation phase or having their score reduced for lack of information.

## 1. Phase I: Required Statements Review

The Required Statements will be evaluated on a pass or fail basis. Responders must "pass" each of the requirements identified in this section to move to Phase II.

## 2. Phase II: Evaluation of Technical Requirements of Proposals

a. Points have been assigned to these component areas. The total possible points for these component areas are as follows:

Component Total	Possible Points
i. Executive Summary	5
ii. Description of the Applicant Agency	125
iii. Impact/Need Narrative	250
iv. Project Goals, Outcomes, Activities (Implementation Plan)	125
v. Evaluation Plan	125
vi. Nursing Facility Closure Preference	20
vii. Budget Proposal	300
viii. Innovative Concepts(bonus points)	<u>50</u>
Total:	1000

b. The evaluation team will review the components of each responsive proposal submitted. Each component will be evaluated on the responder's understanding and the quality and completeness of the responder's approach and solution to the problems or issues presented.

c. After reviewing the proposals, the members of the evaluation team will rate each proposal component using the following formula:

Component Rating	Point Factor
Excellent	1.0
Very Good	0.8
Good	0.7
Satisfactory	0.5
Poor	0.3
Unacceptable	0.0

Upon determining which of the above ratings best describes the component being rated, the total possible points available for the component from paragraph (a) will be multiplied by the corresponding point factor.

Example: A “very good” rating (0.8) of a Proposed Budget worth a maximum of 300 points would receive a score of 240 ( $300 \times 0.8 = 240$ )

d. Innovative Concepts (Optional). Only after the Technical Requirements of the proposal have been ranked, and it has been determined that the responder’s proposal has passed Phase II, will any innovative concepts submitted by responder be reviewed. If a proposal is found not to have passed Phase II, any innovative concepts submitted will not receive consideration. The amount of bonus points to be given a proposal for innovative concepts is at the sole discretion of the State, depending on how much the State determines the ideas enhance the rest of the proposal. The amount given, if any, will be by consensus of the evaluation team. The State is under no obligation to give a proposal any bonus points in any situation. The maximum possible bonus points are 50.

### 3. Phase III: Selection of the Successful Responder(s)

a. Only the proposals found to be responsive under Phases I and II will be considered in Phase III.

b. The evaluation team will review the scoring in making its recommendations of the successful responder(s).

c. The State may submit a list of detailed comments, questions, and concerns to one or more responders after the initial evaluation. The State may require said response to be written, oral, or both. The State will only use written responses for evaluation purposes. The total scores for those responders selected to submit additional information may be revised as a result of the new information.

d. The evaluation team will make its recommendation based on the above-described evaluation process. The successful responder(s), if any, will be selected approximately 16 weeks after the proposal submission due date.

## **D. Contract Negotiations and Unsuccessful Responder Notice**

If a responder(s) is selected, the State will notify the successful responder(s) in writing of their selection and the State’s desire to enter into contract negotiations. Until the State successfully completes negotiations with the selected responder(s), all submitted proposals remain eligible for selection by the State.

In the event contract negotiations are unsuccessful with the selected responder(s), the evaluation team may recommend another responder(s).

After the State and chosen responder(s) have successfully negotiated a contract, the State will notify the unsuccessful responders in writing that their proposals have not been accepted. All public information within proposals will then be available for responders to review, upon request.

## **VI. Required Contract Terms and Conditions**

**A. Requirements.** All responders must be willing to comply with all state and federal legal requirements regarding the performance of the grant contract. The requirements are set forth throughout this RFP and are contained in the attached grant contract in the Appendix.

**B. Governing Law/Venue.** This RFP and any subsequent contract must be governed by the laws of the State of Minnesota. Any and all legal proceedings arising from this RFP or any resulting contract in which the State is made a party must be brought in the State of Minnesota, District Court of Ramsey County. The venue of any federal action or proceeding arising here from in which the State is a party must be the United States District Court for the State of Minnesota.

**C. Travel.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the grantee as a result of the grant contract will be in no greater amount than provided in the current "Commissioner's Plan" promulgated by the commissioner of Minnesota Management and Budget. Reimbursements will not be made for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out-of-state.

**D. Preparation Costs.** The State is not liable for any cost incurred by Responders in the preparation and production of a proposal. Any work performed prior to the issuance of a fully executed grant contract will be done only to the extent the responder voluntarily assumes risk of non-payment.

**E. Contingency Fees Prohibited.** Pursuant to Minnesota Statutes, section 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

**F. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.** Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore the responder must certify the following, as required by the regulations implementing Executive Order 12549.

## Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

### Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

#### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

#### **G. Insurance Requirements**

1. Responder shall not commence work under the grant contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. All policies and certificates shall provide that the policies shall remain in force and effect throughout the term of the grant contract.

2. Responder is required to maintain and furnish satisfactory evidence of the following insurance policies:

a. **Workers' Compensation Insurance:** Except as provided below, responder must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, responder will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance minimum amounts are as follows:

\$100,000 – Bodily Injury by Disease per employee

\$500,000 – Bodily Injury by Disease aggregate

\$100,000 – Bodily Injury by Accident

If Minnesota Statute, section 176.041 exempts responder from Workers' Compensation insurance or if the responder has no employees in the State of Minnesota, responder must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes responder from the Minnesota Workers' Compensation requirements.

If during the course of the grant contract the responder becomes eligible for Workers' Compensation, the responder must comply with the Workers' Compensation Insurance requirements herein and provide the State of Minnesota with a certificate of insurance

b. Commercial General Liability: Responder is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the grant contract whether the operations are by the responder or by a subcontractor or by anyone directly or indirectly employed by the responder under the grant contract. Insurance minimum amounts are as follows:

\$2,000,000 – per occurrence

\$2,000,000 – annual aggregate

\$2,000,000 – annual aggregate – Products/Completed Operations

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage

Personal and Advertising Injury

Blanket Contractual Liability

Products and Completed Operations Liability

Other; if applicable. Please list\_\_\_\_\_.

State of Minnesota named as an Additional Insured, to the extent permitted by law.

c. Commercial Automobile Liability: Responder is required to maintain insurance protecting the responder from claims for damages for bodily injury as well as from claims for property damage resulting from ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this grant contract, and in case any work is subcontracted the responder will require the subcontractor to provide Commercial Automobile Liability. Insurance minimum amounts are as follows:

\$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

Owned, Hired, and Non-owned Automobile

d. Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance (if applicable)



This policy will provide coverage for all claims the responder may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to responder's professional services required under the grant contract.

Responder is required to carry the following minimum amounts:

\$2,000,000 – per claim or event

\$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of the responder and may not exceed \$50,000 without the written approval of the State. If the responder desires authority from the State to have a deductible in a higher amount, the responder shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the responder to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this grant contract and responder shall maintain such insurance for a period of at least three (3) years, following completion of the work. If responder discontinues such insurance, then extended reporting period coverage must be purchased to fulfill this requirement.

e. Blanket Employee Theft/Employee Dishonesty Insurance.

Responder is required to obtain a blanket employee theft/employee dishonesty policy in at least the total amount of the first year's grant award as either an addendum on its property insurance policy, or if it is not feasible to include it as an addendum to a property insurance policy, as a stand-alone employee theft/employee dishonesty policy. The State will be named as both a joint payee and a certificate holder on the property insurance policy addendum or on the stand-alone employee theft/employee dishonesty policy, whichever is applicable. Only in cases in which the first year's grant award exceeds the available employee theft/employee dishonesty coverage may responders provide blanket employee theft/employee dishonesty insurance in an amount equal to either 25% of the yearly grant amount, or the first quarterly advance amount, whichever is greater. Upon execution of a grant contract, the responder must furnish the State with a certificate of employee theft/employee dishonesty insurance. This requirement does not apply to grant contracts with the University of Minnesota, counties, school districts or reservations.

3. Additional Insurance Conditions:

- Responder's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of responder's performance under this grant contract;

- If responder receives a cancellation notice from an insurance carrier affording coverage herein, responder agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless responder's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota;
- Responder is responsible for payment of grant contract related insurance premiums and deductibles;
- If Responder is self-insured, a Certificate of Self-Insurance must be attached;
- Include legal defense fees in addition to its liability policy limits, with the exception of VI.G.2.d. above; and
- Obtain insurance policies from an insurance company having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better and must be authorized to do business in the State of Minnesota; and
- An Umbrella or Excess Liability insurance policy may be used to supplement the responder's policy limits to satisfy the full policy limits required by the grant contract.

4. The State reserves the right to immediately terminate the grant contract if the responder is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the responder. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized representative upon written request.

5. The successful responder is required to submit Certificates of Insurance acceptable to the State of Minnesota as evidence of insurance coverage requirements prior to commencing work under the grant contract.

#### **H. Contingency of Operations Planning Requirement**

Functions identified under this request for proposal have been designated as Priority 1 or Priority 2 services under the Minnesota Department of Human Service's Continuity of Operations Plan. Due to this designation, the successful responder will be required to develop a contingency of operations plan to be implemented in the event of a gubernatorial or commissioner of the Minnesota Department of Health declared health emergency. The successful responder will be expected to have a contingency of operations plan available for inspection by the State upon request. The contingency of operations plan shall do the following:

- (a) ensure fulfillment of Priority 1 or Priority 2 obligations under the contract;

- (b) outline procedures for the activation of the contingency plan upon the occurrence of a governor or commissioner of the Minnesota Department of Health declared health emergency;
- (c) identify an individual as its Emergency Preparedness Response Coordinator (EPRC), the EPRC shall serve as the contact for the State with regard to emergency preparedness and response issues, the EPRC shall provide updates to the State as the health emergency unfolds;
- (d) outline roles, command structure, decision making processes, and emergency action procedures that will be implemented upon the occurrence of a health emergency;
- (e) provide alternative operating plans for Priority 1 or Priority 2 functions;
- (f) include a procedure for returning to normal operations; and
- (g) be available for inspection upon request.

#### **I. Accessibility Standards**

Any information systems, tools, information content, and/or work products, including the response to this solicitation/contract, applications, web sites, video, learning modules, webinars, presentations, etc., whether commercial, off-the-shelf (COTS) or custom, purchased or developed, must comply with the Minnesota IT Accessibility Standards effective September 1, 2010, as updated on October 3, 2013. This standard requires in part, compliance with the Web Content Accessibility Guidelines (WCAG) 2.0 (Level AA) and Section 508 Subparts A-D.

Information technology deliverables and services offered must comply with the [MN.IT Services Accessibility Standards](#). The relevant requirements are contained under the “Standards” tab. Information technology deliverables or services that do not meet the required number of standards or the specific standards required may be rejected and may not receive further consideration.

## **VII. State’s Rights Reserved**

Notwithstanding anything to the contrary, the State reserves the right to:

- A. Reject any and all proposals received in response to this RFP;
- B. Disqualify any responder whose conduct or proposal fails to conform to the requirements of this RFP;
- C. Have unlimited rights to duplicate all materials submitted for purposes of RFP evaluation, and duplicate all public information in response to data requests regarding the proposal;

D. Select for contract or for negotiations a proposal other than that with the lowest cost or the highest evaluation score;

E. Consider a late modification of a proposal if the proposal itself was submitted on time and if the modifications were requested by the State and the modifications make the terms of the proposal more favorable to the State, and accept such proposal as modified;

F. At its sole discretion, reserve the right to waive any non-material deviations from the requirements and procedures of this RFP;

G. Negotiate as to any aspect of the proposal with any responder and negotiate with more than one responder at the same time, including asking for responders' "Best and Final" offers;

H. Extend the grant contract, in increments determined by the State, not to exceed a total contract term of five years; and

I. Cancel the RFP at any time and for any reason with no cost or penalty to the State.

J. Correct or amend the RFP at any time with no cost or penalty to the State. If the State should correct or amend any segment of the RFP after submission of proposals and prior to announcement of the successful responder, all responders will be afforded ample opportunity to revise their proposal to accommodate the RFP amendment and the dates for submission of revised proposals announced at that time. The State will not be liable for any errors in the RFP or other responses related to the RFP.

**Remainder of the page intentionally left blank. (Appendices follows)**

## Appendix A: Sample State Grant Contract

### State of Minnesota Department of Human Services Grant Contract

#### RECITALS

THIS GRANT, and amendments and supplements thereto, is between State of Minnesota, acting through its Department of Human Services \_\_\_\_\_ Division (hereinafter STATE) and \_\_\_\_\_, an independent grantee, not an employee of the State of Minnesota, address \_\_\_\_\_ (hereinafter GRANTEE), witnesseth that:

WHEREAS, the STATE, pursuant to Minnesota Statutes, section \_\_\_\_\_ is empowered to enter into contracts for the following services: \_\_\_\_\_, and

WHEREAS STATE is in need of the following services: \_\_\_\_\_, and

WHEREAS STATE is permitted to share information with the GRANTEE in accordance with Minnesota Statute, section 13.46, and

WHEREAS, GRANTEE represents that it is duly qualified and willing to perform the services set forth herein,

NOW, THEREFORE, it is agreed:

**1. GRANTEE'S DUTIES.** GRANTEE shall:

#### **2. CONSIDERATION AND TERMS OF PAYMENT.**

**2.1 Consideration.** Consideration for all services performed and goods or materials supplied by GRANTEE pursuant to this grant shall be paid by the STATE as follows:

(a.) **Compensation.** GRANTEE will be paid as follows

(b.) **Reimbursement.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by GRANTEE'S performance of this grant contract shall be no greater amount than provided in the current Commissioner's Plan (which is incorporated by reference) promulgated by the Commissioner of Minnesota Management and Budget. GRANTEE shall not be reimbursed for travel and subsistence expense incurred outside the State of Minnesota unless it has received prior written approval for such out of state travel from the STATE.

(c.) **Total obligation.** The total obligation of the STATE for all compensation and reimbursements to GRANTEE shall not exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_).

## Appendix A: Sample State Grant Contract (continued)

d. (If applicable.) For compensation payable under this grant contract, which is subject to withholding under state or federal law, appropriate amounts will be deducted and withheld by the State as required.

### 2.2. Terms of Payment

(a.) Reimbursement shall be one initial cash advance of \_\_\_\_\_ (equal to one calendar month or calendar quarter) followed by monthly/quarterly cost reimbursement based on the previous month's/quarter's expenses as documented by receipts, invoices, travel vouchers, and time sheets.

The STATE shall issue a second cash advance of \_\_\_\_\_ (equal to one calendar month or calendar quarter) after reconciliation of the previous State fiscal year funds. If actual expenditures of the GRANTEE are less than provided in the approved program line item budget at the end of the grant's term, the STATE shall reduce the final payment so as not to exceed expenditures.

(b.) Please document the need for the Advance given to the GRANTEE:

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(c.) Payments shall be made by the STATE promptly after GRANTEE'S presentation of invoices for services performed and acceptance of such services by the STATE'S authorized agent pursuant to Clause 7. Invoices shall be submitted in a form prescribed by the STATE and according to the following schedule:

(d.) (Where applicable. If blank this section does not apply.) Payments are to be made from federal funds obtained by the STATE through Title \_\_\_\_\_ of the \_\_\_\_\_ Act of \_\_\_\_\_ (Public law \_\_\_\_\_ and amendments thereto) Catalog of Federal Domestic Assistance (CFDA) No. \_\_\_\_\_ federal award name and number \_\_\_\_\_ - \_\_\_\_\_. If at any time such funds become unavailable, this grant shall be terminated immediately upon written notice of such fact by the STATE to the GRANTEE. In the event of such termination, GRANTEE shall be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

(e.) GRANTEE's Data Universal Numbering System (DUNS) number is \_\_\_\_\_. The Data Universal Numbering System (DUNS) number is the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities.

**3. CONDITIONS OF PAYMENT.** All services provided by GRANTEE pursuant to this grant contract shall be performed to the satisfaction of the STATE, as determined at the sole

## Appendix A: Sample State Grant Contract (continued)

discretion of its authorized representative, and in accord with all applicable federal, state, and local laws, ordinances, rules and regulations including business registration requirements of the Office of the Secretary of State. GRANTEE shall not receive payment for work found by the STATE to be unsatisfactory, or performed in violation of federal, state or local law, ordinance, rule or regulation.

**4. PAYMENT RECOUPMENT.** The GRANTEE must reimburse the STATE upon demand or the STATE may deduct from future payments under this grant any amounts paid by the STATE, under this or any previous grant, for which invoices and progress reports have not been received, or for which the GRANTEE'S books, records or other documents are not sufficient to clearly substantiate that those amounts were used by the GRANTEE to perform grant services.

**5. TERMS OF CONTRACT.** This grant shall be effective on \_\_\_\_\_, or upon the date that the final required signature is obtained by the STATE, pursuant to Minnesota Statutes, section 16C.05, subdivision 2, whichever occurs later, and shall remain in effect through \_\_\_\_\_, or until all obligations set forth in this grant contract have been satisfactorily fulfilled, whichever occurs first. GRANTEE understands that NO work should begin under this grant contract until ALL required signatures have been obtained, and GRANTEE is notified to begin work by the STATE's Authorized Representative. The GRANTEE shall have a continuing obligation, after said grant period, to comply with the following provisions of grant clauses: 10. Indemnification; 11. State Audits; 12. Information Privacy and Security; 13. Intellectual Property Rights; 14. Publicity; and 20. Jurisdiction and Venue.

### 6. CANCELLATION.

**6.1. For Cause or Convenience.** This grant contract may be canceled by the STATE or GRANTEE at any time, with or without cause, upon thirty (30) days written notice to the other party. In the event of such a cancellation, GRANTEE shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed. The STATE has the right to suspend or terminate this grant contract immediately when the STATE deems the health or welfare of the service recipients is endangered, when the STATE has reasonable cause to believe that the GRANTEE has breached a material term of the grant contract, or when GRANTEE'S non-compliance with the terms of the grant contract may jeopardize federal financial participation.

**6.2. Insufficient Funds.** The STATE may immediately terminate this grant contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination will be by written or fax notice to the GRANTEE. The STATE is not obligated to pay for any services that are provided after notice and effective date of termination. However, the GRANTEE will be entitled to payment, determined on a pro rata basis, for services satisfactorily

## Appendix A: Sample State Grant Contract (continued)

performed to the extent that funds are available. The STATE will not be assessed any penalty if the grant contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The STATE must provide the GRANTEE notice of the lack of funding within a reasonable time of the STATE's receiving that notice.

**6.3. Breach.** Notwithstanding clause 6.1., upon STATE's knowledge of a curable material breach of the grant contract by GRANTEE, STATE shall provide GRANTEE written notice of the breach and ten (10) days to cure the breach. If GRANTEE does not cure the breach within the time allowed, GRANTEE will be in default of this grant contract and STATE may cancel the grant contract immediately thereafter. If GRANTEE has breached a material term of this grant contract and cure is not possible, STATE may immediately terminate this grant contract.

### 7. AUTHORIZED REPRESENTATIVES AND RESPONSIBLE AUTHORITY.

**7.1. State.** The STATE'S authorized representative for the purposes of administration of this grant contract is \_\_\_\_\_ or his/her successor. Such representative shall have final authority for acceptance of GRANTEE'S services and if such services are accepted as satisfactory, shall so certify on each invoice submitted pursuant to Clause 2.2.

**7.2. Grantee.** The GRANTEE's Authorized Representative is \_\_\_\_\_ or his/her successor. If the GRANTEE's Authorized Representative changes at any time during this grant contract, the GRANTEE must immediately notify the STATE.

**7.3. Information Privacy and Security.** (If applicable) GRANTEE's responsible authority for the purposes of complying with data privacy and security for this grant contract is \_\_\_\_\_ or his/her successor.

**8. ASSIGNMENT.** GRANTEE shall neither assign nor transfer any rights or obligations under this grant contract without the prior written consent of the STATE.

**9. AMENDMENTS.** Any amendments to this grant contract shall be in writing, and shall be executed by the same parties who executed the original grant contract, or their successors in office.



## Appendix A: Sample State Grant Contract (continued)

**10. INDEMNIFICATION.** In the performance of this grant contract by GRANTEE, or GRANTEE'S agents or employees, the GRANTEE must indemnify, save, and hold harmless the STATE, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the STATE, to the extent caused by GRANTEE'S: 1) Intentional, willful, or negligent acts or omissions; or 2) Actions that give rise to strict liability; or 3) Breach of contract or warranty. The indemnification obligations of this clause do not apply in the event the claim or cause of action is the result of the STATE'S sole negligence. This clause will not be construed to bar any legal remedies the GRANTEE may have for the STATE'S failure to fulfill its obligation under this grant contract.

**11. STATE AUDITS.** Under Minnesota Statutes, section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices of the GRANTEE and its employees, agents, or subcontractors relevant to this grant contract shall be made available and subject to examination by the STATE, including the contracting Agency/Division, Legislative Auditor, and State Auditor for a minimum of six years from the end of this grant contract.

**12. INFORMATION PRIVACY AND SECURITY.** The GRANTEE and STATE must comply with the Minnesota Government Data Practices Act, Minnesota Statutes, ch. 13, and the Health Insurance Portability Accountability Act ["HIPAA"], 45 C.F.R. § 164.103, et seq., as it applies to all data provided by the STATE under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the GRANTEE under this grant contract. The civil remedies of Minnesota Statutes, section 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minnesota Statutes, ch. 13, by either the GRANTEE or the STATE. Additionally, the remedies of HIPAA apply to the release of data governed by HIPAA.

If the GRANTEE receives a request to release the data referred to in this clause, the GRANTEE must immediately notify and consult with the STATE'S Authorized Representative as to how the GRANTEE should respond to the request. The GRANTEE'S response to the request shall comply with applicable law.

It is expressly agreed that the GRANTEE will not be handling private data collected by STATE and is therefore not a member of or included within the "welfare system" for purposes of the Minnesota Government Data Practices Act (hereinafter "Data Practices Act," Minnesota Statutes, chapter 13, and in particular Minnesota Statutes, section 13.46) as a result of this grant contract. It is also expressly agreed that GRANTEE will not be handling "protected health information" collected by STATE (information that identifies an individual as having applied for, being or having been eligible for, or receiving or having received health care services, as set forth in 45 C.F.R. §160.102). GRANTEE is not a "business associate" of STATE, as defined in the

## Appendix A: Sample State Grant Contract (continued)

Health Insurance Portability Accountability Act ("HIPAA"), 45 C.F.R. §160.103 as a result of or in connection with this grant contract. Therefore, GRANTEE is not required to comply with the privacy provisions of HIPAA as a result of or for purposes of performing under this grant contract. If GRANTEE has responsibilities to comply with the Data Practices Act or HIPAA for reasons other than this grant contract, GRANTEE will be responsible for its own compliance.

**12. INFORMATION PRIVACY AND SECURITY.** The GRANTEE and STATE must comply with the Minnesota Government Data Practices Act, Minnesota Statutes, ch. 13, and the Health Insurance Portability Accountability Act ["HIPAA"], 45 C.F.R. § 164.103, et seq., as it applies to all data provided by the STATE under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the GRANTEE under this grant contract. The civil remedies of Minnesota Statutes, section 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minnesota Statutes, ch. 13, by either the GRANTEE or the STATE. Additionally, the remedies of HIPAA apply to the release of data governed by HIPAA.

If the GRANTEE receives a request to release the data referred to in this clause, the GRANTEE must immediately notify and consult with the STATE's Authorized Representative as to how the GRANTEE should respond to the request. The GRANTEE's response to the request shall comply with applicable law.

**12.1. Information Covered by this Provision.** In carrying out its duties, GRANTEE shall be handling one or more types of private information, collectively referred to as "protected information," concerning individual clients of STATE programs or services. "Protected information," for purposes of this grant contract, includes any or all of the following:

- (a) Private data (as defined in Minnesota Statutes, section 13.02, subdivision 12), confidential data (as defined in Minnesota Statutes, section 13.02, subdivision 3), welfare data (as governed by Minnesota Statutes, section 13.46), medical data (as governed by Minnesota Statutes, section 13.384), and other non-public data governed elsewhere in the Minnesota Government Data Practices Act (MGDPA), Minnesota Statutes, chapter 13;
- (b) Health records (as governed by the Minnesota Health Records Act [Minnesota Statutes, sections 144.291 - 144.298]);
- (c) Chemical health records (as governed by 42 U.S.C. § 290dd-2 and 42 C.F.R. §§ 2.1 to §2.67);
- (d) Protected health information ("PHI") (as defined in and governed by the Health Insurance Portability Accountability Act ["HIPAA"], 45 C.F.R. § 160.103);
- (e) Federal tax information ("FTI") (as protected by 26 U.S.C. §6103), and

## Appendix A: Sample State Grant Contract (continued)

(f) Other data subject to applicable state and federal statutes, rules, and regulations affecting the collection, storage, use, or dissemination of private or confidential information.

**12.2. General Oversight Responsibilities.** GRANTEE shall be responsible for ensuring proper handling and safeguarding by its employees, subcontractors, and authorized agents of protected information collected, created, used, maintained, or disclosed on behalf of STATE. This responsibility includes:

(a) Training: Ensuring that employees and agents comply with and are properly trained regarding, as applicable, the laws listed in 12.1, and

(b) Minimum necessary access to information. GRANTEE shall comply with the “minimum necessary” access and disclosure rule set forth in the HIPAA and the MGDPA. The collection, creation, use, maintenance, and disclosure by GRANTEE shall be limited to “that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government.” See, respectively, 45 C.F.R. §§ 164.502(b) and 164.514(d), and Minnesota Statutes, section 13.05 subdivision 3.

(c) Information Requests. Unless provided for otherwise in this grant contract, if GRANTEE receives a request to release protected information, GRANTEE must immediately notify STATE. STATE shall provide GRANTEE instructions or direction concerning the release of the data to the requesting party before the data is released. See paragraph 12.3(e) below regarding requests from individuals for their own data.

**12.3. Additional Duties to Ensure Proper Handling of Protected Information.** The GRANTEE shall:

(a) Not use or disclose protected health information other than as permitted or required by this grant contract or as required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by this grant contract;

(c) As required at 45 C.F.R. §164.410, report to STATE any use or disclosure of protected health information that is not provided for by the grant contract of which GRANTEE becomes aware, including any breach of unsecured protected health information or any other “privacy” or “security incident” as described below. Upon direction from STATE, GRANTEE must also attempt to mitigate harmful effects resulting from the disclosure.

(i) For purposes of this grant contract, “Security incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or

## Appendix A: Sample State Grant Contract (continued)

interference with system operations in an information system. Security incident shall not include pings and other broadcast attacks on GRANTEE's firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above; so long as such incidents do not result in unauthorized access, use or disclosure of STATE's information. "Privacy incident" means violation of the MGDPA and/or the HIPAA Privacy Rule (45 C.F.R. Part 164, Subpart E), including, but not limited to, improper and/or unauthorized use or disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached.

(ii) The report to the STATE must be in writing and must be sent to STATE not more than seven (7) days after learning of such non-permitted use or disclosure. The report must, at a minimum: 1) Identify the nature of the non-permitted use or disclosure; 2) Identify the PHI used or disclosed; 3) Identify who made the non-permitted use or disclosure, and who received the non-permitted or violating disclosure, if known; 4) Identify what corrective action was taken or will be taken to prevent further non-permitted uses or disclosures; 5) Identify what was done or will be done to mitigate any deleterious effect of the non-permitted use or disclosure; and 6) Provide such other information, including any written documentation, as STATE may reasonably request.

(iii) GRANTEE will provide notice required by 45 C.F.R. §§ 164.404 through 164.408 to affected individuals, news media, and/or the Office of Civil Rights, Department of Health and Human Services, only upon direction from and in coordination with the STATE.

(d) In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree in writing to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;

(e) Within ten (10) business days of a request from an individual or their designee, make available protected health information in a designated record set, consistent with Minnesota Statutes, section 13.04, subd. 3, and 45 C.F.R. § 164.524;

(f) Within ten (10) business days, forward any request to make any amendment(s) to protected health information in a designated record set to STATE in order for the STATE to satisfy STATE's obligations under Minnesota Statutes, section 13.04, subdivision 3 and 45 C.F.R. §164.526;

(g) Maintain and make available no later than fifteen (15) days after receipt of request from the STATE, the information required to provide an accounting of disclosures to the STATE as necessary to satisfy the STATE's obligations under 45 C.F.R. §164.528, or upon request from STATE respond directly to individual's request for an accounting of disclosures;

## Appendix A: Sample State Grant Contract (continued)

(h) To the extent the business associate is to carry out one or more of the STATE's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the STATE in the performance of such obligation(s); and

(i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

(j) Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by STATE.

### 12.4. **STATE's Duties.** STATE shall:

(a) Only release information which it is authorized by law or regulation to share with GRANTEE.

(b) Obtain any required consents, authorizations or other permissions that may be necessary for it to share information with GRANTEE.

(c) Notify GRANTEE of limitation(s), restrictions, changes, or revocation of permission by an individual to use or disclose protected information, to the extent that such limitation(s), restrictions, changes or revocation may affect GRANTEE'S use or permitted disclosure of protected information.

(d) Not request GRANTEE to use or disclose protected information in any manner that would not be permitted under law if done by STATE.

**12.5. Disposition and/or Retention of Protected Information/Data upon Completion, Expiration, or Contract Termination.** Upon completion, expiration, or termination of this grant contract, GRANTEE shall return to STATE or destroy all protected information received or created on behalf of STATE for purposes associated with this grant contract. GRANTEE shall return the protected information to the STATE's Authorized Representative or provide the state with written certification of destruction of the protected information. GRANTEE shall retain no copies of such protected information, provided that if both parties agree that such return or destruction is not feasible, or if GRANTEE is required by the applicable regulation, rule or statutory retention schedule to retain beyond the life of this grant contract, GRANTEE shall extend the protections of this grant contract to the protected information and refrain from further use or disclosure of such information, except for those purposes that make return or destruction infeasible, for as long as GRANTEE maintains the information.

**12.6. Sanctions.** In addition to acknowledging and accepting the general terms set forth in this grant contract relating to indemnification, the parties acknowledge that violation of the laws and protections described above could result in limitations being placed on future access to protected information, in investigation and imposition of sanctions (including but limited to civil

## Appendix A: Sample State Grant Contract (continued)

and criminal penalties) by, among other agencies, the U.S. Department of Health and Human Services, Office for Civil Rights; the federal Internal Revenue Service (IRS); the Centers for Medicare & Medicaid Services (CMS); and the Office of the Attorney General for the State Minnesota.

### 12.7. Miscellaneous.

(a) DHS Information Security Policy. Additional information regarding the handling and, as appropriate, destruction (upon expiration or termination of a grant contract) of protected information obtained from DHS is available at <https://edocs.dhs.state.mn.us/lfsrserver/Public/DHS-4683-ENG>.

(b) Effect of statutory amendments or rule changes. The Parties agree to take such action as is necessary to amend this grant contract from time to time as is necessary for compliance with the requirements of the laws listed in paragraph 12.1 of this clause or in any other applicable law. However, any requirement in this grant contract or in the DHS Information Security Policy that is based upon HIPAA Rules or upon other federal or state information privacy or security laws means the requirement as it is currently in effect, including any applicable amendment(s), regardless of whether the grant contract has been amended to reflect the amendments(s).

(c) Interpretation. Any ambiguity in this grant contract shall be interpreted to permit compliance with the laws listed in paragraph 12.1 of this clause or in any other applicable law.

(d) Survival. The obligations of GRANTEE under this clause shall survive the termination of this grant contract.

**13. Intellectual Property Rights. Definitions.** Works means all inventions, improvements, discoveries (whether or not patentable or copyrightable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the GRANTEE, its employees, agents, and subcontractors, either individually or jointly with others in the performance of the grant contract. Works includes “Documents.” Documents are the originals of any data bases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the GRANTEE, its employees, agents, or subcontractors, in the performance of this grant contract.

**Ownership.** The STATE owns all rights, title, and interest in all of the intellectual property, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under this grant contract. The Works and Documents will be the exclusive property of the STATE and all such Works and Documents must be immediately

## Appendix A: Sample State Grant Contract (continued)

returned to the STATE by the GRANTEE upon completion or cancellation of this grant contract. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be “works made for hire.” If using STATE data, GRANTEE must cite the data, or make clear by referencing that STATE is the source.

### **Responsibilities.**

**Notification.** Whenever any Works or Documents (whether or not patentable) are made or conceived for the first time or actually or constructively reduced to practice by the GRANTEE, including its employees and subcontractors, and are created and paid for under this grant contract, the GRANTEE will immediately give the STATE’S Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon. The GRANTEE will assign all right, title, and interest it may have in the Works and the Documents to the STATE.

**Filing and recording of ownership interests.** The GRANTEE must, at the request of the STATE, execute all papers and perform all other acts necessary to transfer or record the STATE’S ownership interest in the Works and Documents created and paid for under this grant contract. The GRANTEE must perform all acts, and take all steps necessary to ensure that all intellectual property rights in these Works and Documents are the sole property of the STATE, and that neither GRANTEE nor its employees, agents, or subcontractors retain any interest in and to these Works and Documents.

**Duty not to Infringe on intellectual property rights of others.** The GRANTEE represents and warrants that the Works and Documents created and paid for under this grant contract do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 10, the GRANTEE will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the STATE, at the GRANTEE’S expense, from any action or claim brought against the STATE to the extent that it is based on a claim that all or part of these Works or Documents infringe upon the intellectual property rights of others. The GRANTEE will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the GRANTEE’S or the STATE’S opinion is likely to arise, the GRANTEE must, at the STATE’S discretion, either procure for the STATE the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the STATE will be in addition to and not exclusive of other remedies provided by law.



## Appendix A: Sample State Grant Contract (continued)

**13. Intellectual Property Rights. Definitions.** Works means all inventions, improvements, discoveries (whether or not patentable or copyrightable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the GRANTEE, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this grant contract. Works includes “Documents.” Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the GRANTEE, its employees, agents, or subcontractors, in the performance of this grant contract.

**Use of Works and Documents.** GRANTEE owns any Works or Documents developed by the GRANTEE in the performance of this grant contract. The STATE and the U.S. Department of Health and Human Services will have royalty free, non-exclusive, perpetual and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the Works or Documents for government purposes.

**14. PUBLICITY.** Any publicity given to the program, publications, or services provided resulting from this grant contract, including but not limited to, notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the GRANTEE or its employees individually or jointly with others or any subcontractors, shall identify the STATE as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in this grant contract prior to its approval by the State’s Authorized Representative.

**15. AFFIRMATIVE ACTION and NON-DISCRIMINATION.** Affirmative Action requirements for Grantees with more than 40 full-time employees and a contract in excess of \$100,000. If GRANTEE has had more than 40 full-time employees within the State of Minnesota on a single working day during the previous twelve months preceding the date GRANTEE submitted its response to the STATE, it must have an affirmative action plan, approved by the Commissioner of Human Rights of the State of Minnesota, for the employment of qualified minority persons, women and persons with disabilities. See Minnesota Statutes, section 363A.36. If GRANTEE has had more than 40 full-time employees on a single working day during the previous twelve months in the state in which it has its primary place of business, then GRANTEE must either: 1) have a current Minnesota certificate of compliance issued by the Minnesota Commissioner of Human Rights; or 2) certify that it is in compliance with federal Affirmative Action requirements.

Affirmative Action and Non-Discrimination requirements for all Grantees:



## Appendix A: Sample State Grant Contract (continued)

15.1. The GRANTEE agrees not to discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status in regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age in regard to any position for which the employee or applicant for employment is qualified. Minnesota Statutes, section 363A.02. GRANTEE agrees to take affirmative steps to employ, advance in employment, upgrade, train, and recruit minority persons, women, and persons with disabilities.

15.2. The GRANTEE must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The GRANTEE agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Minnesota Rules, part 5000.3550

15.3. GRANTEE agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

Notification to employees and other affected parties. The GRANTEE agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices will state the rights of applicants and employees, and GRANTEE's obligation under the law to take affirmative action to employ and advance in employment qualified minority persons, women, and persons with disabilities.

The GRANTEE will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the GRANTEE is bound by the terms of Minnesota Statutes, section 363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment minority persons, women, and persons with physical and mental disabilities.

Compliance with Department of Human Rights Statutes. In the event of GRANTEE's noncompliance with the provisions of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes, section 363A.36, and the rules and relevant orders issued pursuant to the Minnesota Human Rights Act.

**16. WORKERS' COMPENSATION.** The GRANTEE certifies that it is in compliance with Minnesota Statute, section 176.181, subdivision 2, pertaining to workers' compensation

## Appendix A: Sample State Grant Contract (continued)

insurance coverage. The GRANTEE'S employees and agents will not be considered employees of the STATE. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the STATE'S obligation or responsibility.

**17. VOTER REGISTRATION REQUIREMENT.** GRANTEE certifies that it will comply with Minnesota Statutes, section 201.162 by providing voter registration services for its employees and for the public served by the GRANTEE.

**18. OWNERSHIP OF EQUIPMENT.** Disposition of all equipment purchased under this grant contract shall be in accordance with title 45, code of federal regulations, part 92. For all equipment having a current per unit fair market value of \$5,000 or more, the STATE shall have the right to require transfer of the equipment (including title) to the Federal Government or to an eligible non-Federal party named by the STATE. This right will normally be exercised by the STATE only if the project or program for which the equipment was acquired is transferred from one grantee to another.

**18. OWNERSHIP OF EQUIPMENT.** The STATE shall have the right to require transfer of all equipment purchased with grant funds (including title) to the STATE or to an eligible non-STATE party named by the STATE. This right will normally be exercised by the STATE only if the project or program for which the equipment was acquired is transferred from one grantee to another.

**19. FEDERAL AUDIT REQUIREMENTS AND GRANTEE DEBARMENT INFORMATION.** GRANTEE certifies it will comply with the Single Audit Act, and OMB Circular A-133, as applicable. All sub-recipients receiving \$500,000 or more of federal assistance in a fiscal year will obtain a financial and compliance audit made in accordance with the Single Audit Act, or OMB Circular A-133, as applicable. Failure to comply with these requirements could result in forfeiture of federal funds.

### DEBARMENT BY STATE, ITS DEPARTMENTS, COMMISSIONS, AGENCIES OR POLITICAL SUBDIVISIONS

GRANTEE certifies that neither it nor its principles is presently debarred or suspended by the STATE, or any of its departments, commissions, agencies, or political subdivisions. GRANTEE'S certification is a material representation upon which the grant contract award was based. GRANTEE shall provide immediate written notice to the STATE'S authorized representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

## Appendix A: Sample State Grant Contract (continued)

### CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

Federal money will be used or may potentially be used to pay for all or part of the work under the grant contract, therefore GRANTEE certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. GRANTEE'S certification is a material representation upon which the grant contract award was based.

**20. JURISDICTION AND VENUE.** This grant contract, and amendments and supplements thereto, shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this grant contract, or breach thereof, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

**21. WAIVER.** If the State fails to enforce any provision of this grant contract, that failure does not waive the provision or the STATE's right to enforce it.

**22. CONTRACT COMPLETE.** This grant contract contains all negotiations and agreements between the STATE and the GRANTEE. No other understanding regarding this grant contract, whether written or oral may be used to bind either party.

**23. OTHER PROVISIONS.** 23.1. GRANTEE agrees that it will at all times during the term of the grant contract keep in force a commercial general liability insurance policy with the following minimum amounts: \$2,000,000 per occurrence and \$2,000,000 annual aggregate, protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the grant contract whether the operations are by the GRANTEE or by a subcontractor or by anyone directly or indirectly employed by the GRANTEE under the grant contract.

23.2. The GRANTEE further agrees to keep in force a blanket employee theft/employee dishonesty policy in at least the total amount of the first year's grant award as either an addendum on its property insurance policy, or, if it is not feasible to include it as an addendum to a property insurance policy, as a stand-alone employee theft/employee dishonesty policy. The STATE will be named as both a joint payee and a certificate holder on the employee theft/employee dishonesty addendum or on the stand-alone employee theft/employee dishonesty policy, whichever is applicable. Only in cases in which the first year's grant award exceeds the available employee theft/employee dishonesty coverage may grantees provide blanket employee theft/employee dishonesty insurance in an amount equal to either 25% of the yearly grant amount, or the first quarterly advance amount, whichever is greater. Upon

## Appendix A: Sample State Grant Contract (continued)

execution of this grant contract, the GRANTEE shall furnish the State with a certificate of employee theft/employee dishonesty insurance.

23.3. GRANTEE agrees that no religious based counseling shall take place under the auspices of this grant contract.

23.4. If the GRANTEE has an independent audit, a copy of the audit shall be submitted to the STATE.

23.5. **Payment to Subcontractors.** (If applicable) As required by Minnesota Statutes, section 16A.1245, the prime GRANTEE must pay all subcontractors, less any retainage, within ten (10) calendar days of the prime GRANTEE's receipt of payment from the State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

23.6. **Contingency Planning.** Within 90 days of the execution of this grant contract, GRANTEE and any subcontractor will have a contingency plan. The contingency plan shall:

- (a) ensure fulfillment of Priority 1 or Priority 2 obligations under this grant contract;
- (b) outline procedures for the activation of the contingency plan upon the occurrence of a governor or commissioner of the Minnesota Department of Health declared health emergency;
- (c) identify an individual as its Emergency Preparedness Response Coordinator (EPRC), the EPRC shall serve as the contact for the STATE with regard to emergency preparedness and response issues, the EPRC shall provide updates to the STATE as the health emergency unfolds;
- (d) outline roles, command structure, decision making processes, and emergency action procedures that will be implemented upon the occurrence of a health emergency;
- (e) provide alternative operating plans for Priority 1 or Priority 2 functions;
- (f) include a procedure for returning to normal operations; and
- (g) be available for inspection upon request.

## Appendix B: Sample State County Grant Contract

### State of Minnesota Department of Human Services County Grant Contract

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#### RECITALS

THIS GRANT, and amendments and supplements thereto, is between State of Minnesota, acting through its Department of Human Services \_\_\_\_\_ Division (hereinafter STATE) and the county of \_\_\_\_\_, an independent contractor, not an employee of the State of Minnesota, address \_\_\_\_\_ (hereinafter GRANTEE), witnesseth that:

WHEREAS, the STATE, pursuant to Minnesota Statutes, section \_\_\_\_\_ is empowered to enter into contracts for the following services: \_\_\_\_\_, and

WHEREAS STATE is in need of the following services: \_\_\_\_\_, and

WHEREAS STATE is permitted to share information with the GRANTEE in accordance with Minnesota Statute, section 13.46, and

WHEREAS, GRANTEE represents that it is duly qualified and willing to perform the services set forth herein,

NOW, THEREFORE, it is agreed:

**1. GRANTEE'S DUTIES.** GRANTEE shall:

#### **2. CONSIDERATION AND TERMS OF PAYMENT.**

**2.1 Consideration.** Consideration for all services performed and goods or materials supplied b GRANTEE pursuant to this grant shall be paid by the STATE as follows:

**(a.) Compensation.** GRANTEE will be paid as follows

**(b.) Reimbursement.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by GRANTEE'S performance of this grant contract shall be no greater amount than provided in the current Commissioner's Plan (which is incorporated by reference) promulgated by the Commissioner of Minnesota Management and Budget. GRANTEE shall not be reimbursed for travel and subsistence expense incurred outside the State of Minnesota unless it has received prior written approval for such out of state travel from the STATE.

## Appendix B: Sample State County Grant Contract (continued)

**(c.) Total obligation.** The total obligation of the STATE for all compensation and reimbursements to GRANTEE shall not exceed\_\_\_\_\_ dollars (\$\_\_\_\_\_).

d. (If applicable.) For compensation payable under this grant contract, which is subject to withholding under state or federal law, appropriate amounts will be deducted and withheld by the State as required.

### 2.2. Terms of Payment

(a.) Reimbursement shall be one initial cash advance of \_\_\_\_\_(equal to one calendar month or calendar quarter) followed by monthly/quarterly cost reimbursement based on the previous month's/quarter's expenses as documented by receipts, invoices, travel vouchers, and time sheets.

The STATE shall issue a second cash advance of \_\_\_\_\_(equal to one calendar month or calendar quarter) after reconciliation of the previous State fiscal year funds. If actual expenditures of the GRANTEE are less than provided in the approved program line item budget at the end of the grant's term, the STATE shall reduce the final payment so as not to exceed expenditures.

(b.) Please document the need for the Advance given to the GRANTEE:

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(c.) Payments shall be made by the STATE promptly after GRANTEE'S presentation of invoices for services performed and acceptance of such services by the STATE'S authorized agent pursuant to Clause 7. Invoices shall be submitted in a form prescribed by the STATE and according to the following schedule:

(d.) (Where applicable. If blank this section does not apply.) Payments are to be made from federal funds obtained by the STATE through Title\_\_\_\_\_ of the\_\_\_\_\_Act of \_\_\_\_\_(Public law \_\_\_\_\_and amendments thereto) Catalog of Federal Domestic Assistance (CFDA) No. \_\_\_\_\_ federal award name and number \_\_\_\_\_ - \_\_\_\_\_. If at any time such funds become unavailable, this grant shall be terminated immediately upon written notice of such fact by the STATE to the GRANTEE. In the event of such termination, GRANTEE shall be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

**3. CONDITIONS OF PAYMENT.** All services provided by GRANTEE pursuant to this grant contract shall be performed to the satisfaction of the STATE, as determined at the sole discretion of its authorized representative, and in accord with all applicable federal, state, and local laws, ordinances, rules and regulations. GRANTEE shall not receive payment for work found by the STATE to be unsatisfactory, or performed in violation of federal, state or local law, ordinance, rule or regulation.

## Appendix B: Sample State County Grant Contract (continued)

**4. PAYMENT RECOUPMENT.** The GRANTEE must reimburse the STATE upon demand or the STATE may deduct from future payments under this grant any amounts paid by the STATE, under this or any previous grant, for which invoices and progress reports have not been received, or for which the GRANTEE'S books, records or other documents are not sufficient to clearly substantiate that those amounts were used by the GRANTEE to perform grant services.

**5. TERMS OF CONTRACT.** This grant shall be effective on \_\_\_\_\_, or upon the date that the final required signature is obtained by the STATE, pursuant to Minnesota Statutes, section 16C.05, subdivision 2, whichever occurs later, and shall remain in effect through \_\_\_\_\_, or until all obligations set forth in this grant contract have been satisfactorily fulfilled, whichever occurs first. GRANTEE understands that NO work should begin under this grant contract until ALL required signatures have been obtained, and GRANTEE is notified to begin work by the STATE's Authorized Representative. The GRANTEE shall have a continuing obligation, after said grant period, to comply with the following provisions of grant clauses: 10. Liability; 11. State Audits; 12. Information Privacy and Security; 13. Intellectual Property Rights; and 19. Jurisdiction and Venue.

### **6. CANCELLATION.**

**6.1. For Cause or Convenience.** This grant contract may be canceled by the STATE or GRANTEE at any time, with or without cause, upon thirty (30) days written notice to the other party. In the event of such a cancellation, GRANTEE shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed. The STATE has the right to suspend or terminate this grant contract immediately when the STATE deems the health or welfare of the service recipients is endangered, when the STATE has reasonable cause to believe that the GRANTEE has breached a material term of the grant contract, or when GRANTEE'S non-compliance with the terms of the grant contract may jeopardize federal financial participation.

**6.2. Insufficient Funds.** The STATE may immediately terminate this grant contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination will be by written or fax notice to the GRANTEE. The STATE is not obligated to pay for any services that are provided after notice and effective date of termination. However, the GRANTEE will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The STATE will not be assessed any penalty if the grant contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The STATE must provide the GRANTEE notice of the lack of funding within a reasonable time of the STATE's receiving that notice.

**6.3. Breach.** Notwithstanding clause 6.1., upon STATE's knowledge of a curable material breach of the grant contract by GRANTEE, STATE shall provide GRANTEE written notice of the breach and ten (10) days to cure the breach. If GRANTEE does not cure the breach within the



## Appendix B: Sample State County Grant Contract (continued)

time allowed, GRANTEE will be in default of this grant contract and STATE may cancel the grant contract immediately thereafter. If GRANTEE has breached a material term of this grant contract and cure is not possible, STATE may immediately terminate this grant contract.

### **7. AUTHORIZED REPRESENTATIVES AND RESPONSIBLE AUTHORITY.**

**7.1. State.** The STATE'S authorized representative for the purposes of administration of this grant contract is \_\_\_\_\_ or his/her successor. Such representative shall have final authority for acceptance of GRANTEE'S services and if such services are accepted as satisfactory, shall so certify on each invoice submitted pursuant to Clause 2.2.

**7.2. Grantee.** The GRANTEE's Authorized Representative is \_\_\_\_\_ or his/her successor. If the GRANTEE's Authorized Representative changes at any time during this grant contract, the GRANTEE must immediately notify the STATE.

**8. ASSIGNMENT.** GRANTEE shall neither assign nor transfer any rights or obligations under this grant contract without the prior written consent of the STATE.

**9. AMENDMENTS.** Any amendments to this grant contract shall be in writing, and shall be executed by the same parties who executed the original grant contract, or their successors in office.

**10. LIABILITY.** To the extent provided for in Minnesota Statutes, section 466.01 to 466.15, the GRANTEE agrees to be responsible for any and all claims or causes of action arising from the performance of this grant by GRANTEE or GRANTEE'S agents or employees. This clause shall not be construed to bar any legal remedies GRANTEE may have for the STATE'S failure to fulfill its obligations pursuant to this grant.

**11. STATE AUDITS.** Under Minnesota Statutes, section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices of the GRANTEE and its employees, agents, or subcontractors relevant to this grant contract shall be made available and subject to examination by the STATE, including the contracting Agency/Division, Legislative Auditor, and State Auditor for a minimum of six years from the end of this grant contract.

### **12. INFORMATION PRIVACY AND SECURITY**

For purposes of executing its responsibilities and to the extent set forth in this grant contract, the GRANTEE will be processing health care bills or payments on behalf of STATE, and/or conducting other health care operations on behalf of STATE. In carrying out its duties, GRANTEE will be handling protected health information and other private information concerning individual STATE clients. As such, GRANTEE agrees to be bound by the state and federal laws protecting the privacy of information, including the Data Practices Act, Minnesota Health Records Act, Health Insurance Portability Accountability Act (HIPAA), Health Information



## Appendix B: Sample State County Grant Contract (continued)

Technology for Economic and Clinical Health Act (HITECH) 42 U.S.C. §§ 17921(5) and 17931; and federal drug and alcohol treatment regulations.

Because GRANTEE is handling protected health information and providing health care services to clients on behalf of STATE, GRANTEE must comply with the terms of the Information Privacy Agreement signed by its County Administrator, which is on file in the STATE Privacy Official's Office located at STATE's Central Office, 540 Cedar Street, St. Paul, MN 55164-0998 and is incorporated herein by reference.

### 13. Intellectual Property Rights.

**Definitions.** Works means all inventions, improvements, discoveries (whether or not patentable or copyrightable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the GRANTEE, its employees, agents, and subcontractors, either individually or jointly with others in the performance of the grant contract. Works includes "Documents." Documents are the originals of any data bases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the GRANTEE, its employees, agents, or subcontractors, in the performance of this grant contract.

**Ownership.** The STATE owns all rights, title, and interest in all of the intellectual property, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under this grant contract. The Works and Documents will be the exclusive property of the STATE and all such Works and Documents must be immediately returned to the STATE by the GRANTEE upon completion or cancellation of this grant contract. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." If using STATE data, GRANTEE must cite the data, or make clear by referencing that STATE is the source.

### Responsibilities.

**Notification.** Whenever any Works or Documents (whether or not patentable) are made or conceived for the first time or actually or constructively reduced to practice by the GRANTEE, including its employees and subcontractors, and are created and paid for under this grant contract, the GRANTEE will immediately give the STATE'S Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon. The GRANTEE will assign all right, title, and interest it may have in the Works and the Documents to the STATE.

**Filing and recording of ownership interests.** The GRANTEE must, at the request of the STATE, execute all papers and perform all other acts necessary to transfer or record the STATE'S ownership interest in the Works and Documents created and paid for under this grant contract. The GRANTEE must perform all acts, and take all steps necessary to ensure that all intellectual

## Appendix B: Sample State County Grant Contract (continued)

property rights in these Works and Documents are the sole property of the STATE, and that neither GRANTEE nor its employees, agents, or subcontractors retain any interest in and to these Works and Documents.

**Duty not to Infringe on intellectual property rights of others.** The GRANTEE represents and warrants that the Works and Documents created and paid for under this grant contract do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 10, the GRANTEE will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the STATE, at the GRANTEE'S expense, from any action or claim brought against the STATE to the extent that it is based on a claim that all or part of these Works or Documents infringe upon the intellectual property rights of others. The GRANTEE will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the GRANTEE'S or the STATE'S opinion is likely to arise, the GRANTEE must, at the STATE'S discretion, either procure for the STATE the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the STATE will be in addition to and not exclusive of other remedies provided by law.

### 13. Intellectual Property Rights.

**Definitions.** Works means all inventions, improvements, discoveries (whether or not patentable or copyrightable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the GRANTEE, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this grant contract. Works includes "Documents." Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the GRANTEE, its employees, agents, or subcontractors, in the performance of this grant contract.

**Use of Works and Documents.** GRANTEE owns any Works or Documents developed by the GRANTEE in the performance of this grant contract. The STATE and the U.S. Department of Health and Human Services will have royalty free, non-exclusive, perpetual and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the Works or Documents for government purposes.

### 14. AFFIRMATIVE ACTION and NON-DISCRIMINATION.

**Affirmative Action.** GRANTEE is encouraged to prepare and implement an Affirmative Action plan for the employment of qualified minority persons, women and persons with disabilities, and to submit the plan to the Commissioner of Human Rights, in accordance with Minnesota Statutes, section 363A.36.

## Appendix B: Sample State County Grant Contract (continued)

### Non-Discrimination.

14.1. The GRANTEE agrees not to discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status in regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age in regard to any position for which the employee or applicant for employment is qualified. Minnesota Statutes, section 363A.02. GRANTEE agrees to take affirmative steps to employ, advance in employment, upgrade, train, and recruit minority persons, women, and persons with disabilities.

14.2. The GRANTEE must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The GRANTEE agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Minnesota Rules, part 5000.3550

14.3. GRANTEE agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

Notification to employees and other affected parties. The GRANTEE agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices will state the rights of applicants and employees, and GRANTEE's obligation under the law to take affirmative action to employ and advance in employment qualified minority persons, women, and persons with disabilities.

The GRANTEE will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the GRANTEE is bound by the terms of Minnesota Statutes, section 363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment minority persons, women, and persons with physical and mental disabilities.

**Compliance with Department of Human Rights Statutes.** In the event of GRANTEE's noncompliance with the provisions of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes, section 363A.36, and the rules and relevant orders issued pursuant to the Minnesota Human Rights Act.

**15. WORKERS' COMPENSATION.** The GRANTEE certifies that it is in compliance with Minnesota Statute, section 176.181, subdivision 2, pertaining to workers' compensation insurance coverage. The GRANTEE'S employees and agents will not be considered employees of the STATE. Any claims that may arise under the Minnesota Workers' Compensation Act on

## Appendix B: Sample State County Grant Contract (continued)

behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the STATE'S obligation or responsibility.

**16. VOTER REGISTRATION REQUIREMENT.** GRANTEE certifies that it will comply with Minnesota Statutes, section 201.162 by providing voter registration services for its employees and for the public served by the GRANTEE.

**17. OWNERSHIP OF EQUIPMENT.** Disposition of all equipment purchased under this grant contract shall be in accordance with title 45, code of federal regulations, part 92. For all equipment having a current per unit fair market value of \$5,000 or more, the STATE shall have the right to require transfer of the equipment (including title) to the Federal Government or to an eligible non-Federal party named by the STATE. This right will normally be exercised by the STATE only if the project or program for which the equipment was acquired is transferred from one grantee to another.

**17. OWNERSHIP OF EQUIPMENT.** The STATE shall have the right to require transfer of all equipment purchased with grant funds (including title) to the STATE or to an eligible non-STATE party named by the STATE. This right will normally be exercised by the STATE only if the project or program for which the equipment was acquired is transferred from one grantee to another.

**18. FEDERAL AUDIT REQUIREMENTS AND GRANTEE DEBARMENT INFORMATION.** GRANTEE certifies it will comply with the Single Audit Act, and OMB Circular A-133, as applicable. All sub-recipients receiving \$500,000 or more of federal assistance in a fiscal year will obtain a financial and compliance audit made in accordance with the Single Audit Act, or OMB Circular A-133, as applicable. Failure to comply with these requirements could result in forfeiture of federal funds.

### DEBARMENT BY STATE, ITS DEPARTMENTS, COMMISSIONS, AGENCIES OR POLITICAL SUBDIVISIONS

GRANTEE certifies that neither it nor its principles is presently debarred or suspended by the STATE, or any of its departments, commissions, agencies, or political subdivisions. GRANTEE'S certification is a material representation upon which the grant contract award was based. GRANTEE shall provide immediate written notice to the STATE'S authorized representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

### CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

Federal money will be used or may potentially be used to pay for all or part of the work under the grant contract, therefore GRANTEE certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the

## Appendix B: Sample State County Grant Contract (continued)

solicitation document implementing Executive Order 12549. GRANTEE'S certification is a material representation upon which the grant contract award was based.

### **18. FEDERAL AUDIT REQUIREMENTS AND GRANTEE DEBARMENT INFORMATION.**

FEDERAL AUDIT REQUIREMENTS AND GRANTEE DEBARMENT INFORMATION. GRANTEE certifies it will comply with the Single Audit Act, and OMB Circular A-133, as applicable. All sub-recipients receiving \$500,000 or more of federal assistance in a fiscal year will obtain a financial and compliance audit made in accordance with the Single Audit Act, or OMB Circular A-133, as applicable. Failure to comply with these requirements could result in forfeiture of federal funds.

DEBARMENT BY STATE, ITS DEPARTMENTS, COMMISSIONS, AGENCIES OR POLITICAL SUBDIVISIONS GRANTEE certifies that neither it nor its principles is presently debarred or suspended by the STATE, or any of its departments, commissions, agencies, or political subdivisions. GRANTEE'S certification is a material representation upon which the grant contract award was based. GRANTEE shall provide immediate written notice to the STATE'S authorized representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

#### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNATRY EXCLUSION**

Federal money will be used or may potentially be used to pay for all or part of the work under the grant contract, therefore the GRANTEE must certify the following, as required by the regulations implementing Executive Order 12549. GRANTEE'S certification is a material representation upon which the grant contract award was based.

#### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION- LOWER TIER COVERED TRANSATIONS**

##### **Instructions for Certification**

1. By signing and submitting this grant contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this grant contract is submitted if at any time the prospective lower tier participant

## Appendix B: Sample State County Grant Contract (continued)

learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549. You may contact the person to which this grant contract is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this grant contract that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION- LOWER TIER COVERED TRANSACTIONS**

## Appendix B: Sample State County Grant Contract (continued)

1. The prospective lower tier participant certifies, by submission of this grant contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this grant contract.

**19. JURISDICTION AND VENUE.** This grant contract, and amendments and supplements thereto, shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this grant contract, or breach thereof, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

**20. WAIVER.** If the State fails to enforce any provision of this grant contract, that failure does not waive the provision or the STATE's right to enforce it.

**21. CONTRACT COMPLETE.** This grant contract contains all negotiations and agreements between the STATE and the GRANTEE. No other understanding regarding this grant contract, whether written or oral may be used to bind either party.

### **22. OTHER PROVISIONS.**

22.1. GRANTEE agrees that no religious based counseling shall take place under the auspices of this grant contract.

22.2. If the GRANTEE has an independent audit, a copy of the audit shall be submitted to the STATE.

**22.3. Payment to Subcontractors.** (If applicable) As required by Minnesota Statutes, section 471.425, the prime GRANTEE must pay all subcontractors, according to the terms of the contract or, if no contract terms apply, within the standard payment period unless the GRANTEE in good faith disputes the obligation. Standard payment period is defined in Minnesota Statutes, section 471.425, subdivision 2.

**22.4. Contingency Planning.** Within 90 days of the execution of this grant contract, GRANTEE and any subcontractor will have a contingency plan. The contingency plan shall:

(a) ensure fulfillment of Priority 1 or Priority 2 obligations under this grant contract;

(b) outline procedures for the activation of the contingency plan upon the occurrence of a governor or commissioner of the Minnesota Department of Health declared health emergency;



## Appendix B: Sample State County Grant Contract (continued)

(c) identify an individual as its Emergency Preparedness Response Coordinator (EPRC), the EPRC shall serve as the contact for the STATE with regard to emergency preparedness and response issues, the EPRC shall provide updates to the STATE as the health emergency unfolds;

(d) outline roles, command structure, decision making processes, and emergency action procedures that will be implemented upon the occurrence of a health emergency;

(e) provide alternative operating plans for Priority 1 or Priority 2 functions;

(f) include a procedure for returning to normal operations; and

(g) be available for inspection upon request.



## Appendix C: Sample State Indian Reservation Grant Contract

### State of Minnesota Department of Human Services Reservation Grant Contract

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#### RECITALS

WHEREAS State of Minnesota desires to purchase certain services in connection with \_\_\_\_\_, and

WHEREAS, The State of Minnesota and the \_\_\_\_\_ Reservation have a shared interest in the delivery of \_\_\_\_\_ services on the \_\_\_\_\_ Reservation; and

WHEREAS, the State of Minnesota, Department of Human Services, is authorized to enter into grant contracts pursuant to Minnesota Statutes, section \_\_\_\_\_; and

WHEREAS, the State of Minnesota, pursuant to Minnesota Statutes, section 16C.05, subdivision 7, shall not require an Indian tribe or band to deny their sovereignty as a requirement or condition of a contract with the State or an agency of the State; and

WHEREAS STATE is permitted to share information with the RESERVATION in accordance with Minnesota Statute, section 13.46, and

WHEREAS, the \_\_\_\_\_ Reservation represents that it is duly qualified and willing to perform the services set forth herein;

NOW THEREFORE, this grant, which shall be interpreted pursuant to the laws of the State of Minnesota, is entered into by the State of Minnesota, acting through its \_\_\_\_\_ Division, (hereinafter STATE) and \_\_\_\_\_ address \_\_\_\_\_, an independent contractor, and not an employee of the State of Minnesota (hereinafter RESERVATION).

THIS GRANT, and amendments and supplements thereto, is between State of Minnesota, acting through its Department of Human Services \_\_\_\_\_ Division (hereinafter STATE) and \_\_\_\_\_, an independent grantee, not an employee of the State of Minnesota, address \_\_\_\_\_ (hereinafter RESERVATION), witnesseth that:

NOW, THEREFORE, it is agreed:

#### **1. RESERVATION'S DUTIES.** RESERVATION shall:

## Appendix C: Sample State Indian Reservation Grant Contract (continued)

### 2. CONSIDERATION AND TERMS OF PAYMENT.

**2.1 Consideration.** Consideration for all services performed and goods or materials supplied by RESERVATION pursuant to this grant shall be paid by the STATE as follows:

**(a.) Compensation.** RESERVATION will be paid as follows

**(b.) Reimbursement.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by RESERVATION'S performance of this grant contract shall be no greater amount than provided in the current Commissioner's Plan (which is incorporated by reference) promulgated by the Commissioner of Minnesota Management and Budget. RESERVATION shall not be reimbursed for travel and subsistence expense incurred outside the State of Minnesota unless it has received prior written approval for such out of state travel from the STATE.

**(c.) Total obligation.** The total obligation of the STATE for all compensation and reimbursements to RESERVATION shall not exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_).

d. (If applicable.) For compensation payable under this grant contract, which is subject to withholding under state or federal law, appropriate amounts will be deducted and withheld by the State as required.

### 2.2. Terms of Payment

(a.) Reimbursement shall be one initial cash advance of \_\_\_\_\_ (equal to one calendar month or calendar quarter) followed by monthly/quarterly cost reimbursement based on the previous month's/quarter's expenses as documented by receipts, invoices, travel vouchers, and time sheets.

The STATE shall issue a second cash advance of \_\_\_\_\_ (equal to one calendar month or calendar quarter) after reconciliation of the previous State fiscal year funds. If actual expenditures of the RESERVATION are less than provided in the approved program line item budget at the end of the grant's term, the STATE shall reduce the final payment so as not to exceed expenditures.

(b.) Please document the need for the Advance given to the RESERVATION:

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(c.) Payments shall be made by the STATE promptly after RESERVATION'S presentation of invoices for services performed and acceptance of such services by the STATE'S authorized agent pursuant to Clause 8. Invoices shall be submitted in a form prescribed by the STATE and according to the following schedule:

(d.) (Where applicable. If blank this section does not apply.) Payments are to be made from federal funds obtained by the STATE through Title \_\_\_\_\_ of the \_\_\_\_\_ Act of

## Appendix C: Sample State Indian Reservation Grant Contract (continued)

\_\_\_\_\_ (Public law \_\_\_\_\_ and amendments thereto) Catalog of Federal Domestic Assistance (CFDA) No. \_\_\_\_\_ federal award name and number \_\_\_\_\_ - \_\_\_\_\_. If at any time such funds become unavailable, this grant shall be terminated immediately upon written notice of such fact by the STATE to the RESERVATION. In the event of such termination, RESERVATION shall be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

**3. CONDITIONS OF PAYMENT.** All services provided by RESERVATION pursuant to this grant contract shall be performed to the satisfaction of the STATE, as determined at the sole discretion of its authorized representative, and in accord with all applicable federal, state, and local laws, ordinances, rules and regulations. RESERVATION shall not receive payment for work found by the STATE to be unsatisfactory, or performed in violation of federal, state or local law, ordinance, rule or regulation.

**4. PAYMENT RECOUPMENT.** The RESERVATION must reimburse the STATE upon demand or the STATE may deduct from future payments under this grant or future grants the following:

4.1. Any amounts received by the RESERVATION from the STATE for contract services which have been inaccurately reported or are found to be unsubstantiated.

4.2. Any amounts paid by the RESERVATION to a subcontractor not authorized in writing by the STATE.

4.3. Any amount paid by the STATE for services which either duplicate services covered by other specific grants or contracts, or amounts determined by the STATE as non-allowable under the line item budget, clause 2.1(a).

4.4. Any amounts paid by the STATE for which the RESERVATION'S books, records and other documents are not sufficient to clearly substantiate that those amounts were used by the RESERVATION to perform contract services, in accordance with clause 1 Reservation's Duties.

4.5. Any amount identified as a financial audit exception.

**5. TERMS OF CONTRACT.** This grant shall be effective on \_\_\_\_\_, or upon the date that the final required signature is obtained by the STATE, pursuant to Minnesota Statutes, section 16C.05, subdivision 2, whichever occurs later, and shall remain in effect through \_\_\_\_\_, or until all obligations set forth in this grant contract have been satisfactorily fulfilled, whichever occurs first. RESERVATION understands that NO work should begin under this grant contract until ALL required signatures have been obtained, and RESERVATION is notified to begin work by the STATE's Authorized Representative. The RESERVATION shall have a continuing obligation, after said grant period, to comply with the

## Appendix C: Sample State Indian Reservation Grant Contract (continued)

following provisions of grant clauses: 12. State Audits; 15. Information Privacy and Security; 16. Ownership of Materials and Intellectual Property Rights.

### 6. CANCELLATION.

**6.1. For Cause or Convenience.** This grant contract may be canceled by the STATE or RESERVATION at any time, with or without cause, upon thirty (30) days written notice to the other party. In the event of such a cancellation, RESERVATION shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed. The STATE has the right to suspend or terminate this grant contract immediately when the STATE deems the health or welfare of the service recipients is endangered, when the STATE has reasonable cause to believe that the RESERVATION has breached a material term of the grant contract, or when RESERVATION'S non-compliance with the terms of the grant contract may jeopardize federal financial participation.

**6.2. Insufficient Funds.** The STATE may immediately terminate this grant contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination will be by written or fax notice to the RESERVATION. The STATE is not obligated to pay for any services that are provided after notice and effective date of termination. However, the RESERVATION will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The STATE will not be assessed any penalty if the grant contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The STATE must provide the RESERVATION notice of the lack of funding within a reasonable time of the STATE's receiving that notice.

**6.3. Breach.** Notwithstanding clause 6.1., upon STATE's knowledge of a curable material breach of the grant contract by RESERVATION, STATE shall provide RESERVATION written notice of the breach and ten (10) days to cure the breach. If RESERVATION does not cure the breach within the time allowed, RESERVATION will be in default of this grant contract and STATE may cancel the grant contract immediately thereafter. If RESERVATION has breached a material term of this grant contract and cure is not possible, STATE may immediately terminate this grant contract.

**7. Default.** If the RESERVATION fails to comply with one or more provisions of this grant contract, the STATE may by written notice claim that the RESERVATION is in default and specify a period of time, not less than fourteen (14) and not more than sixty (60) days from receipt of notification, by which such alleged default must be corrected. RESERVATION shall be notified that should such alleged default fail to be corrected within the specified period, or should the RESERVATION fail to prove the lack of default, the STATE may terminate the contract. Nothing

## Appendix C: Sample State Indian Reservation Grant Contract (continued)

in this section shall limit the STATE's right to cancel the grant contract in accordance with the provisions of clause 6. Cancellation.

### 8. AUTHORIZED REPRESENTATIVES AND RESPONSIBLE AUTHORITY.

**8.1. State.** The STATE's authorized representative for the purposes of administration of this grant contract is \_\_\_\_\_ or his/her successor. Such representative shall have final authority for acceptance of RESERVATION'S services and if such services are accepted as satisfactory, shall so certify on each invoice submitted pursuant to Clause 2.2.

**8.2. Reservation.** The RESERVATION's Authorized Representative is \_\_\_\_\_ or his/her successor. If the RESERVATION's Authorized Representative changes at any time during this grant contract, the RESERVATION must immediately notify the STATE.

**8.3. Information Privacy and Security.** (If applicable) RESERVATION's responsible authority for the purposes of complying with data privacy and security for this grant contract is \_\_\_\_\_ or his/her successor.

**9. ASSIGNMENT.** RESERVATION shall neither assign nor transfer any rights or obligations under this grant contract without the prior written consent of the STATE.

**10. AMENDMENTS.** Any amendments to this grant contract shall be in writing, and shall be executed by the same parties who executed the original grant contract, or their successors in office.

### 11. SUBCONTRACTS.

**11.1. Subcontracts.** No rights or obligation of the RESERVATION under this contract shall be subcontracted by the RESERVATION without prior written approval of the STATE. All subcontracts will incorporate the laws, rules and regulations governing this contract. The RESERVATION shall bear full responsibility for performance under all approved subcontracts, shall forward copies of such subcontracts to the STATE upon request, and shall bear all costs for defense of any litigation arising out of any subcontract.

**11.2 Payment to Subcontractors.** (If applicable) As required by Minnesota Statutes, section 16A.1245, the prime contractor must pay all subcontractors, less any retainage, within ten (10) calendar days of the prime contractor's receipt of payment from the STATE for undisputed services provided by subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

## Appendix C: Sample State Indian Reservation Grant Contract (continued)

**12. STATE AUDITS.** Under Minnesota Statutes, section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices of the RESERVATION and its employees, agents, or subcontractors relevant to this grant contract shall be made available and subject to examination by the STATE, including the contracting Agency/Division, Legislative Auditor, and State Auditor for a minimum of six years from the end of this grant contract.

**13. FEDERAL AUDIT REQUIREMENTS AND RESERVATION DEBARMENT INFORMATION.** RESERVATION certifies it will comply with the Single Audit Act, and OMB Circular A-133, as applicable. All sub-recipients receiving \$500,000 or more of federal assistance in a fiscal year will obtain a financial and compliance audit made in accordance with the Single Audit Act, or OMB Circular A-133, as applicable. Failure to comply with these requirements could result in forfeiture of federal funds.

### DEBARMENT BY STATE, ITS DEPARTMENTS, COMMISSIONS, AGENCIES OR POLITICAL SUBDIVISIONS

RESERVATION certifies that neither it nor its principles is presently debarred or suspended by the STATE, or any of its departments, commissions, agencies, or political subdivisions. RESERVATION'S certification is a material representation upon which the grant contract award was based. RESERVATION shall provide immediate written notice to the STATE'S authorized representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

### CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

Federal money will be used or may potentially be used to pay for all or part of the work under the grant contract, therefore RESERVATION certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. RESERVATION'S certification is a material representation upon which the grant contract award was based.

## 13. FEDERAL AUDIT REQUIREMENTS AND RESERVATION DEBARMENT INFORMATION.

### FEDERAL AUDIT REQUIREMENTS AND RESERVATION DEBARMENT INFORMATION.

RESERVATION certifies it will comply with the Single Audit Act, and OMB Circular A-133, as applicable. All sub-recipients receiving \$500,000 or more of federal assistance in a fiscal year will obtain a financial and compliance audit made in accordance with the Single Audit Act, or OMB Circular A-133, as applicable. Failure to comply with these requirements could result in forfeiture of federal funds.

## Appendix C: Sample State Indian Reservation Grant Contract (continued)

### DEBARMENT BY STATE, ITS DEPARTMENTS, COMMISSIONS, AGENCIES OR POLITICAL SUBDIVISIONS

RESERVATION certifies that neither it nor its principles is presently debarred or suspended by the STATE, or any of its departments, commissions, agencies, or political subdivisions. RESERVATION'S certification is a material representation upon which the grant contract award was based. RESERVATION shall provide immediate written notice to the STATE'S authorized representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

### CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNATRY EXCLUSION

Federal money will be used or may potentially be used to pay for all or part of the work under the grant contract, therefore the RESERVATION must certify the following, as required by the regulations implementing Executive Order 12549. RESERVATION'S certification is a material representation upon which the grant contract award was based.

### CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION- LOWER TIER COVERED TRANSATIONS

#### Instructions for Certification

1. By signing and submitting this grant contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this grant contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549. You may contact the person to which this grant contract is submitted for assistance in obtaining a copy of those regulations.



## Appendix C: Sample State Indian Reservation Grant Contract (continued)

5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this grant contract that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

### CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION- LOWER TIER COVERED TRANSACTIONS

1. The prospective lower tier participant certifies, by submission of this grant contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this grant contract.



## Appendix C: Sample State Indian Reservation Grant Contract (continued)

### 14. INDEMNIFICATION AND INSURANCE.

**14.1 Indemnification.** In the performance of this grant contract by RESERVATION, or RESERVATION'S agents or employees, the RESERVATION must indemnify, save, and hold harmless the STATE, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the STATE, to the extent caused by RESERVATION'S: 1.) Intentional, willful, or negligent acts or omissions; or 2. ) Actions that give rise to strict liability; or 3.) Breach of contract or warranty.

The indemnification obligations of this clause do not apply in the event the claim or cause of action is the result of the STATE'S sole negligence. This clause will not be construed to bar any legal remedies the RESERVATION may have for the STATE'S failure to fulfill its obligation under this grant contract.

**14.2. Insurance.** The RESERVATION agrees to at all times during the term of this grant contract to keep in force a commercial general liability insurance policy with the following minimum amounts: \$2,000,000 per occurrence and \$2,000,000 annual aggregate, protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the grant contract whether the operations are by the RESERVATION or by a subcontractor or by anyone directly or indirectly employed by the RESERVATION under the grant contract. Upon execution of this grant contract, the RESERVATION shall furnish the STATE with a certificate of commercial liability insurance.

### 15. INFORMATION PRIVACY AND SECURITY

The RESERVATION and STATE must comply with the Minnesota Government Data Practices Act, Minnesota Statutes, ch. 13, and the Health Insurance Portability Accountability Act ["HIPAA"], 45 C.F.R. § 164.103, et seq., as it applies to all data provided by the STATE under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the RESERVATION under this grant contract. The civil remedies of Minnesota Statutes, section 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minnesota Statutes, ch. 13, by either the RESERVATION or the STATE. Additionally, the remedies of HIPAA apply to the release of data governed by HIPAA.

If the RESERVATION receives a request to release the data referred to in this clause, the RESERVATION must immediately notify and consult with the STATE's Authorized Representative as to how the RESERVATION should respond to the request. The RESERVATION's response to the request shall comply with applicable law.

It is expressly agreed that the RESERVATION will not be handling private data collected by STATE and is therefore not a member of or included within the "welfare system" for purposes

## Appendix C: Sample State Indian Reservation Grant Contract (continued)

of the Minnesota Government Data Practices Act (hereinafter “Data Practices Act,” Minnesota Statutes, chapter 13, and in particular Minnesota Statutes, section 13.46) as a result of this grant contract. It is also expressly agreed that RESERVATION will not be handling "protected health information" collected by STATE (information that identifies an individual as having applied for, being or having been eligible for, or receiving or having received health care services, as set forth in 45 C.F.R. §160.102). RESERVATION is not a "business associate" of STATE, as defined in the Health Insurance Portability Accountability Act ("HIPAA"), 45 C.F.R. §160.103 as a result of or in connection with this grant contract. Therefore, RESERVATION is not required to comply with the privacy provisions of HIPAA as a result of or for purposes of performing under this grant contract. If RESERVATION has responsibilities to comply with the Data Practices Act or HIPAA for reasons other than this grant contract, RESERVATION will be responsible for its own compliance.

### 15. INFORMATION PRIVACY AND SECURITY

The RESERVATION and STATE must comply with the Minnesota Government Data Practices Act, Minnesota Statutes, ch. 13, and the Health Insurance Portability Accountability Act [“HIPAA”], 45 C.F.R. § 164.103, et seq., as it applies to all data provided by the STATE under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the RESERVATION under this grant contract. The civil remedies of Minnesota Statutes, section 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minnesota Statutes, ch. 13, by either the RESERVATION or the STATE. Additionally, the remedies of HIPAA apply to the release of data governed by HIPAA.

If the RESERVATION receives a request to release the data referred to in this clause, the RESERVATION must immediately notify and consult with the STATE’s Authorized Representative as to how the RESERVATION should respond to the request. The RESERVATION’s response to the request shall comply with applicable law.

**15.1. Information Covered by this Provision.** In carrying out its duties, RESERVATION shall be handling one or more types of private information, collectively referred to as “protected information,” concerning individual clients of STATE programs or services. “Protected information,” for purposes of this grant contract, includes any or all of the following:

(a) Private data (as defined in Minnesota Statutes, section 13.02, subdivision 12), confidential data (as defined in Minnesota Statutes, section 13.02, subdivision 3), welfare data (as governed by Minnesota Statutes, section 13.46), medical data (as governed by Minnesota Statutes, section 13.384), and other non-public data governed elsewhere in the Minnesota Government Data Practices Act (MGDPA), Minnesota Statutes, chapter 13;

(b) Health records (as governed by the Minnesota Health Records Act [Minnesota Statutes, sections 144.291 - 144.298]);

(c) Chemical health records (as governed by 42 U.S.C. § 290dd-2 and 42 C.F.R. §§ 2.1 to 2.67);

## Appendix C: Sample State Indian Reservation Grant Contract (continued)

(d) Protected health information (“PHI”) (as defined in and governed by the Health Insurance Portability Accountability Act [“HIPAA”], 45 C.F.R. § 160.103);

(e) Federal tax information (“FTI”) (as protected by 26 U.S.C. §6103), and

(f) Other data subject to applicable state and federal statutes, rules, and regulations affecting the collection, storage, use, or dissemination of private or confidential information.

**15.2. General Oversight Responsibilities.** RESERVATION shall be responsible for ensuring proper handling and safeguarding by its employees, subcontractors, and authorized agents of protected information collected, created, used, maintained, or disclosed on behalf of STATE. This responsibility includes:

(a) Training: Ensuring that employees and agents comply with and are properly trained regarding, as applicable, the laws listed in 15.1, and

(b) Minimum necessary access to information. RESERVATION shall comply with the “minimum necessary” access and disclosure rule set forth in the HIPAA and the MGDPA. The collection, creation, use, maintenance, and disclosure by RESERVATION shall be limited to “that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government.” See, respectively, 45 C.F.R. §§ 164.502(b) and 164.514(d), and Minnesota Statutes, section 13.05 subdivision 3.

(c) Information Requests. Unless provided for otherwise in this grant contract, if RESERVATION receives a request to release protected information, RESERVATION must immediately notify STATE. STATE shall provide RESERVATION instructions or direction concerning the release of the data to the requesting party before the data is released. See paragraph 15.3(e) below regarding requests from individuals for their own data.

**15.3. Additional Duties to Ensure Proper Handling of Protected Information.** The RESERVATION shall:

(a) Not use or disclose protected health information other than as permitted or required by this grant contract or as required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by this grant contract;

(c) As required at 45 C.F.R. §164.410, report to STATE any use or disclosure of protected health information that is not provided for by the grant contract of which RESERVATION becomes

## Appendix C: Sample State Indian Reservation Grant Contract (continued)

aware, including any breach of unsecured protected health information or any other “privacy” or “security incident” as described below. Upon direction from STATE, RESERVATION must also attempt to mitigate harmful effects resulting from the disclosure.

(i) For purposes of this grant contract, “Security incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. Security incident shall not include pings and other broadcast attacks on RESERVATION’s firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above; so long as such incidents do not result in unauthorized access, use or disclosure of STATE’s information. “Privacy incident” means violation of the MGDPA and/or the HIPAA Privacy Rule (45 C.F.R. Part 164, Subpart E), including, but not limited to, improper and/or unauthorized use or disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached.

(ii) The report to the STATE must be in writing and must be sent to STATE not more than seven (7) days after learning of such non-permitted use or disclosure. The report must, at a minimum: 1) Identify the nature of the non-permitted use or disclosure; 2) Identify the PHI used or disclosed; 3) Identify who made the non-permitted use or disclosure, and who received the non-permitted or violating disclosure, if known; 4) Identify what corrective action was taken or will be taken to prevent further non-permitted uses or disclosures; 5) Identify what was done or will be done to mitigate any deleterious effect of the non-permitted use or disclosure; and 6) Provide such other information, including any written documentation, as STATE may reasonably request.

(iii) RESERVATION will provide notice required by 45 C.F.R. §§ 164.404 through 164.408 to affected individuals, news media, and/or the Office of Civil Rights, Department of Health and Human Services, only upon direction from and in coordination with the STATE.

(d) In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree in writing to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;

(e) Within ten (10) business days of a request from an individual or their designee, make available protected health information in a designated record set, consistent with Minnesota Statutes, section 13.04, subd. 3, and 45 C.F.R. § 164.524;

(f) Within ten (10) business days, forward any request to make any amendment(s) to protected health information in a designated record set to STATE in order for the STATE to satisfy STATE’s obligations under Minnesota Statutes, section 13.04, subdivision 3 and 45 C.F.R. § 164.526;

## Appendix C: Sample State Indian Reservation Grant Contract (continued)

(g) Maintain and make available no later than fifteen (15) days after receipt of request from the STATE, the information required to provide an accounting of disclosures to the STATE as necessary to satisfy the STATE's obligations under 45 C.F.R. §164.528, or upon request from STATE respond directly to individual's request for an accounting of disclosures;

(h) To the extent the business associate is to carry out one or more of the STATE's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the STATE in the performance of such obligation(s); and

(i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

(j) Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by STATE.

### **15.4. STATE's Duties.** STATE shall:

(a) Only release information which it is authorized by law or regulation to share with RESERVATION.

(b) Obtain any required consents, authorizations or other permissions that may be necessary for it to share information with RESERVATION.

(c) Notify RESERVATION of limitation(s), restrictions, changes, or revocation of permission by an individual to use or disclose protected information, to the extent that such limitation(s), restrictions, changes or revocation may affect RESERVATION'S use or permitted disclosure of protected information.

(d) Not request RESERVATION to use or disclose protected information in any manner that would not be permitted under law if done by STATE.

**15.5. Disposition and/or Retention of Protected Information/Data upon Completion, Expiration, or Contract Termination.** Upon completion, expiration, or termination of this grant contract, RESERVATION shall return to STATE or destroy all protected information received or created on behalf of STATE for purposes associated with this grant contract. RESERVATION shall return the protected information to the STATE's Authorized Representative or provide the state with written certification of destruction of the protected information. RESERVATION shall retain no copies of such protected information, provided that if both parties agree that such return or destruction is not feasible, or if RESERVATION is required by the applicable regulation, rule or statutory retention schedule to retain beyond the life of this grant contract, RESERVATION shall extend the protections of this grant contract to the protected information and refrain from further use or disclosure of such information,

## Appendix C: Sample State Indian Reservation Grant Contract (continued)

except for those purposes that make return or destruction infeasible, for as long as RESERVATION maintains the information.

**15.6. Sanctions.** In addition to acknowledging and accepting the general terms set forth in this grant contract relating to indemnification, the parties acknowledge that violation of the laws and protections described above could result in limitations being placed on future access to protected information, in investigation and imposition of sanctions (including but limited to civil and criminal penalties) by, among other agencies, the U.S. Department of Health and Human Services, Office for Civil Rights; the federal Internal Revenue Service (IRS); the Centers for Medicare & Medicaid Services (CMS); and the Office of the Attorney General for the State Minnesota.

### 15.7. Miscellaneous.

(a) DHS Information Security Policy. Additional information regarding the handling and, as appropriate, destruction (upon expiration or termination of a grant contract) of protected information obtained from DHS is available at <https://edocs.dhs.state.mn.us/lfsrserver/Public/DHS-4683-ENG>.

(b) Effect of statutory amendments or rule changes. The Parties agree to take such action as is necessary to amend this grant contract from time to time as is necessary for compliance with the requirements of the laws listed in paragraph 15.1 of this clause or in any other applicable law. However, any requirement in this grant contract or in the DHS Information Security Policy that is based upon HIPAA Rules or upon other federal or state information privacy or security laws means the requirement as it is currently in effect, including any applicable amendment(s), regardless of whether the grant contract has been amended to reflect the amendments(s).

(c) Interpretation. Any ambiguity in this grant contract shall be interpreted to permit compliance with the laws listed in paragraph 15.1 of this clause or in any other applicable law.

(d) Survival. The obligations of RESERVATION under this clause shall survive the termination of this grant contract.

## 16. OWNERSHIP OF MATERIALS AND INTELLECTUAL PROPERTY RIGHTS.

If any copyrightable material is developed in the course of or under this grant, the STATE and the United States Department of Health and Human Services shall have a royalty-free, nonexclusive, perpetual and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for government purposes.

All advertisements, publications and related materials which are produced by the RESERVATION and refer to contract services shall state that such services are funded under contract with the STATE and where federal funds are involved, state by reference the specific funding source.

## Appendix C: Sample State Indian Reservation Grant Contract (continued)

**17. WORKERS' COMPENSATION.** The RESERVATION agrees to provide acceptable evidence of workers' compensation insurance coverage.

**18. NON-DISCRIMINATION.** The RESERVATION shall comply with the Indian Civil Rights Act of 1968. The RESERVATION also agrees to comply with the Indian Self-Determination and Education Assistance Act, which provides for preferential employment and training of Indians in programs serving Indians.

**19. OWNERSHIP OF EQUIPMENT.** Disposition of all equipment purchased under this grant contract shall be in accordance with title 45, code of federal regulations, part 92. For all equipment having a current per unit fair market value of \$5,000 or more, the STATE shall have the right to require transfer of the equipment (including title) to the Federal Government or to an eligible non-Federal party named by the STATE. This right will normally be exercised by the STATE only if the project or program for which the equipment was acquired is transferred from one grantee to another.

**19. OWNERSHIP OF EQUIPMENT.** The STATE shall have the right to require transfer of all equipment purchased with grant funds (including title) to the STATE or to an eligible non-STATE party named by the STATE. This right will normally be exercised by the STATE only if the project or program for which the equipment was acquired is transferred from one grantee to another.

**20. WAIVER.** If the State fails to enforce any provision of this grant contract, that failure does not waive the provision or the STATE's right to enforce it.

**21. CONTRACT COMPLETE.** This grant contract contains all negotiations and agreements between the STATE and the RESERVATION. No other understanding regarding this grant contract, whether written or oral may be used to bind either party.

### **22. OTHER PROVISIONS.**

**22.1.** The RESERVATION will voluntarily provide voter registration services for its employees and for the public served by the RESERVATION.

**22.2. Contingency Planning.** Within 90 days of the execution of this grant contract, RESERVATION and any subcontractor will have a contingency plan. The contingency plan shall:

- (a) ensure fulfillment of Priority 1 or Priority 2 obligations under this grant contract;
- (b) outline procedures for the activation of the contingency plan upon the occurrence of a governor or commissioner of the Minnesota Department of Health declared health emergency;

## **Appendix C: Sample State Indian Reservation Grant Contract (continued)**

(c) identify an individual as its Emergency Preparedness Response Coordinator (EPRC), the EPRC shall serve as the contact for the STATE with regard to emergency preparedness and response issues, the EPRC shall provide updates to the STATE as the health emergency unfolds;

(d) outline roles, command structure, decision making processes, and emergency action procedures that will be implemented upon the occurrence of a health emergency;

(e) provide alternative operating plans for Priority 1 or Priority 2 functions;

(f) include a procedure for returning to normal operations; and



## Appendix D: Sample State U of M Grant Contract

### State of Minnesota Department of Human Services University of Minnesota Grant Contract

#### RECITALS

THIS GRANT, and amendments and supplements thereto, is between State of Minnesota, acting through its Department of Human Services \_\_\_\_\_ Division (hereinafter STATE) and The University of Minnesota, acting through its \_\_\_\_\_, an independent contractor, not an employee of the State of Minnesota, address \_\_\_\_\_ (hereinafter UNIVERSITY), witnesseth that:

WHEREAS, the STATE, pursuant to Minnesota Statutes, section \_\_\_\_\_ is empowered to enter into contracts for the following services: \_\_\_\_\_, and

WHEREAS STATE is in need of the following services: \_\_\_\_\_, and

WHEREAS STATE is permitted to share information with the UNIVERSITY in accordance with Minnesota Statute, section 13.46, and

WHEREAS, UNIVERSITY represents that it is duly qualified and willing to perform the services set forth herein,

NOW, THEREFORE, it is agreed:

#### **1. UNIVERSITY'S DUTIES.** UNIVERSITY shall:

#### **2. CONSIDERATION AND TERMS OF PAYMENT.**

**2.1 Consideration.** Consideration for all services performed and goods or materials supplied by UNIVERSITY pursuant to this grant shall be paid by the STATE as follows:

**(a.) Compensation.** UNIVERSITY will be paid as follows

**(b.) Reimbursement.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by UNIVERSITY'S performance of this grant contract shall be no greater amount than provided in the University of Minnesota Travel Policy. UNIVERSITY shall not be reimbursed for travel and subsistence expense incurred outside the State of Minnesota unless it has received prior written approval for such out of state travel from the STATE. Minnesota will be considered the home state for determining whether travel is out of state.

## Appendix D: Sample State U of M Grant Contract (continued)

**(c.) Total obligation.** The total obligation of the STATE for all compensation and reimbursements to UNIVERSITY shall not exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_).

d. (If applicable.) For compensation payable under this grant contract, which is subject to withholding under state or federal law, appropriate amounts will be deducted and withheld by the State as required.

### 2.2. Terms of Payment

(a.) Reimbursement shall be one initial cash advance of \_\_\_\_\_ (equal to one calendar month or calendar quarter) followed by monthly/quarterly cost reimbursement based on the previous month's/quarter's expenses as documented by receipts, invoices, travel vouchers, and time sheets.

The STATE shall issue a second cash advance of \_\_\_\_\_ (equal to one calendar month or calendar quarter) after reconciliation of the previous State fiscal year funds. If actual expenditures of the UNIVERSITY are less than provided in the approved program line item budget at the end of the grant's term, the STATE shall reduce the final payment so as not to exceed expenditures.

(b.) Please document the need for the Advance given to the UNIVERSITY:

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(c.) Payments shall be made by the STATE promptly after UNIVERSITY'S presentation of invoices for services performed and acceptance of such services by the STATE'S authorized agent pursuant to Clause 7. Invoices shall be submitted in a form prescribed by the STATE and according to the following schedule:

(d.) (Where applicable. If blank this section does not apply.) Payments are to be made from federal funds obtained by the STATE through Title \_\_\_\_\_ of the \_\_\_\_\_ Act of \_\_\_\_\_ (Public law \_\_\_\_\_ and amendments thereto) Catalog of Federal Domestic Assistance (CFDA) No. \_\_\_\_\_ federal award name and number \_\_\_\_\_ - \_\_\_\_\_. If at any time such funds become unavailable, this grant shall be terminated immediately upon written notice of such fact by the STATE to the UNIVERSITY. In the event of such termination, UNIVERSITY shall be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

**3. CONDITIONS OF PAYMENT.** All services provided by UNIVERSITY pursuant to this grant contract shall be performed to the satisfaction of the STATE, as determined at the sole discretion of its authorized representative, and in accord with all applicable federal, state, and local laws, ordinances, rules and regulations. UNIVERSITY shall not receive payment for work found by the STATE to be unsatisfactory, or performed in violation of federal, state or local law, ordinance, rule or regulation.

## Appendix D: Sample State U of M Grant Contract (continued)

**4. PAYMENT RECOUPMENT.** The UNIVERSITY must reimburse the STATE upon demand or the STATE may deduct from future payments under this grant any amounts paid by the STATE, under this or any previous grant, for which invoices and progress reports have not been received, or for which the UNIVERSITY'S books, records or other documents are not sufficient to clearly substantiate that those amounts were used by the UNIVERSITY to perform grant services.

**5. TERMS OF CONTRACT.** This grant shall be effective on \_\_\_\_\_, or upon the date that the final required signature is obtained by the STATE, pursuant to Minnesota Statutes, section 16C.05, subdivision 2, whichever occurs later, and shall remain in effect through \_\_\_\_\_, or until all obligations set forth in this grant contract have been satisfactorily fulfilled, whichever occurs first. UNIVERSITY understands that NO work should begin under this grant contract until ALL required signatures have been obtained, and UNIVERSITY is notified to begin work by the STATE's Authorized Representative. The UNIVERSITY shall have a continuing obligation, after said grant period, to comply with the following provisions of grant clauses: 10. Liability; 11. State Audits; 13. Intellectual Property Rights; 14. Information Privacy and Security; 20. Jurisdiction and Venue and 23. Publicity and Endorsement.

### **6. CANCELLATION.**

**6.1. For Cause or Convenience.** This grant contract may be canceled by the STATE or UNIVERSITY at any time, with or without cause, upon thirty (30) days written notice to the other party. In the event of such a cancellation, UNIVERSITY shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed. The STATE has the right to suspend or terminate this grant contract immediately when the STATE deems the health or welfare of the service recipients is endangered, when the STATE has reasonable cause to believe that the UNIVERSITY has breached a material term of the grant contract, or when UNIVERSITY'S non-compliance with the terms of the grant contract may jeopardize federal financial participation.

**6.2. Insufficient Funds.** The STATE may immediately terminate this grant contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination will be by written or fax notice to the UNIVERSITY. The STATE is not obligated to pay for any services that are provided after notice and effective date of termination. However, the UNIVERSITY will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The STATE will not be assessed any penalty if the grant contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The STATE must provide the UNIVERSITY notice of the lack of funding within a reasonable time of the STATE's receiving that notice.

## Appendix D: Sample State U of M Grant Contract (continued)

**6.3. Breach.** Notwithstanding clause 6.1., upon STATE's knowledge of a curable material breach of the grant contract by UNIVERSITY, STATE shall provide UNIVERSITY written notice of the breach and ten (10) days to cure the breach. If UNIVERSITY does not cure the breach within the time allowed, UNIVERSITY will be in default of this grant contract and STATE may cancel the grant contract immediately thereafter. If UNIVERSITY has breached a material term of this grant contract and cure is not possible, STATE may immediately terminate this grant contract.

## **7. AUTHORIZED REPRESENTATIVES AND RESPONSIBLE AUTHORITY.**

**7.1. State.** The STATE'S authorized representative for the purposes of administration of this grant contract is \_\_\_\_\_ or his/her successor. Such representative shall have final authority for acceptance of UNIVERSITY'S services and if such services are accepted as satisfactory, shall so certify on each invoice submitted pursuant to Clause 2.2.

**7.2. UNIVERSITY.** The UNIVERSITY's Authorized Representative is \_\_\_\_\_ or his/her successor. If the UNIVERSITY's Authorized Representative changes at any time during this grant contract, the UNIVERSITY must immediately notify the STATE.

**7.3. Information Privacy and Security.** (If applicable) UNIVERSITY's responsible authority for the purposes of complying with data privacy and security for this grant contract is \_\_\_\_\_ or his/her successor.

**8. ASSIGNMENT.** UNIVERSITY shall neither assign nor transfer any rights or obligations under this grant contract without the prior written consent of the STATE.

**9. AMENDMENTS.** Any amendments to this grant contract shall be in writing, and shall be executed by the same parties who executed the original grant contract, or their successors in office.

**10. LIABILITY.** To the extent provided under the Tort Claims Act, Minnesota Statutes, section 3.736, UNIVERSITY agrees to hold the STATE, its agents and employees harmless from any and all claims or causes of action arising from the performance of this grant by UNIVERSITY or UNIVERSITY'S agents or employees. This clause shall not be construed to bar any legal remedies UNIVERSITY may have for the STATE'S failure to fulfill its obligations pursuant to this grant.

**11. STATE AUDITS.** Under Minnesota Statutes, section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices of the UNIVERSITY and its employees, agents, or subcontractors relevant to this grant contract shall be made available and subject to examination by the STATE, including the contracting Agency/Division, Legislative Auditor, and State Auditor for a minimum of six years from the end of this grant contract.

## Appendix D: Sample State U of M Grant Contract (continued)

**12. RETENTION OF DOCUMENTS.** Any report, study, computer software, data base, model, invention, photograph, negative, audio or video recording, or other item or documents prepared by UNIVERSITY in the performance of its obligations under this grant shall be remitted to the STATE by UNIVERSITY upon completion, termination or cancellation of this grant. Nothing in this article shall be construed to limit the UNIVERSITY'S obligation to comply with the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13, and clause 14. Information Privacy and Security of this grant contract.

### **13. INTELLECTUAL PROPERTY.**

**13.1. Intellectual Property Rights.** The UNIVERSITY shall own all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the WORKS and DOCUMENTS. WORKS shall mean all inventions, improvements or discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks, conceived, reduced to practices, created or originated by the UNIVERSITY, its employees, and subcontractors, either individually or jointly with others, in the performance of the grant contract. WORKS shall include the DOCUMENTS. The DOCUMENTS are the originals of any databases, computer programs, reports, notes, or other materials and documents, whether intangible or electronic forms, prepared by the UNIVERSITY, its employees, or subcontractors, in the performance of this grant contract. The DOCUMENTS shall be the exclusive property of the UNIVERSITY. The STATE agrees to, and hereby does, assign all rights, title, and interest it may have in the WORKS and the DOCUMENTS to the UNIVERSITY. The STATE shall, at the request of the UNIVERSITY, execute all papers and perform all other acts necessary to transfer or record the UNIVERSITY's ownership interest in the WORKS and the DOCUMENTS.

**13.2. Obligations.** The UNIVERSITY represents and warrants to the STATE that the WORKS and DOCUMENTS do not and shall not infringe upon any intellectual property rights of others. The UNIVERSITY shall indemnify, defend and hold harmless the STATE at the UNIVERSITY's expense, from any action or claim brought against the STATE to the extent that it is based on a claim that all or part of the WORKS or DOCUMENTS infringe upon intellectual property rights of others. The UNIVERSITY shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs and damages including but not limited to, attorney fees. If such a claim or action arises, or in the UNIVERSITY or STATE's opinion is likely to arise, the UNIVERSITY shall, at the STATE's discretion, either attempt to procure for the STATE on commercially reasonable terms the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing WORKS or DOCUMENTS as necessary and appropriate to obviate the infringement claim. This remedy of the STATE shall be in addition to and shall not be exclusive to other remedies provided by law. Nothing in Clause 13.2 shall constitute or be construed to constitute a waiver by either the STATE or the UNIVERSITY of the sovereign

## Appendix D: Sample State U of M Grant Contract (continued)

immunity of each party from certain suits or remedies relating to infringement claims.

UNIVERSITY may assert the immunities of the STATE in connection with UNIVERSITY's defense of any infringement claim brought against the STATE. The STATE shall reasonably cooperate with the UNIVERSITY in connection with the UNIVERSITY's defense of any claim or suit, and the STATE shall discontinue use of any allegedly infringing WORKS or DOCUMENTS at UNIVERSITY's reasonable request.

**13.3. License to STATE.** Subject to the terms and conditions of this grant contract, the UNIVERSITY hereby grants to the STATE a perpetual, irrevocable, no-fee right and license to make, have made, reproduce, modify, distribute, perform, and otherwise use the WORKS and DOCUMENTS for any and all purposes, in all forms and manners that the STATE, in its sole discretion, deems appropriate. The UNIVERSITY shall, upon the request of the STATE, execute all papers and perform all other acts necessary, to document and secure said right and license to the WORKS and DOCUMENTS by the STATE. At the request of the STATE, the UNIVERSITY shall permit the STATE to inspect the original DOCUMENTS and provide a copy of any of the DOCUMENTS to the STATE, without cost, for use by the STATE in any manner the STATE, in its sole discretion, deems appropriate.

**13.4. Survivability.** The rights and duties of the STATE and the UNIVERSITY, provided for above, shall survive the expiration or cancellation of this grant contract.

## 14. INFORMATION PRIVACY AND SECURITY

The UNIVERSITY and STATE must comply with the Minnesota Government Data Practices Act, Minnesota Statutes, ch. 13, and the Health Insurance Portability Accountability Act ["HIPAA"], 45 C.F.R. § 164.103, et seq., as it applies to all data provided by the STATE under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the UNIVERSITY under this grant contract. The civil remedies of Minnesota Statutes, section 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minnesota Statutes, ch. 13, by either the UNIVERSITY or the STATE. Additionally, the remedies of HIPAA apply to the release of data governed by HIPAA.

If the UNIVERSITY receives a request to release the data referred to in this clause, the UNIVERSITY must immediately notify and consult with the STATE's Authorized Representative as to how the UNIVERSITY should respond to the request. The UNIVERSITY's response to the request shall comply with applicable law.

It is expressly agreed that the UNIVERSITY will not be handling private data collected by STATE and is therefore not a member of or included within the "welfare system" for purposes of the Minnesota Government Data Practices Act (hereinafter "Data Practices Act," Minnesota Statutes, chapter 13, and in particular Minnesota Statutes, section 13.46) as a result of this grant contract. It is also expressly agreed that UNIVERSITY will not be handling "protected

## Appendix D: Sample State U of M Grant Contract (continued)

health information" collected by STATE (information that identifies an individual as having applied for, being or having been eligible for, or receiving or having received health care services, as set forth in 45 C.F.R. §160.102). UNIVERSITY is not a "business associate" of STATE, as defined in the Health Insurance Portability Accountability Act ("HIPAA"), 45 C.F.R. §160.103 as a result of or in connection with this grant contract. Therefore, UNIVERSITY is not required to comply with the privacy provisions of HIPAA as a result of or for purposes of performing under this grant contract. If UNIVERSITY has responsibilities to comply with the Data Practices Act or HIPAA for reasons other than this grant contract, UNIVERSITY will be responsible for its own compliance.

### 14. INFORMATION PRIVACY AND SECURITY

The UNIVERSITY and STATE must comply with the Minnesota Government Data Practices Act, Minnesota Statutes, ch. 13, and the Health Insurance Portability Accountability Act ["HIPAA"], 45 C.F.R. § 164.103, et seq., as it applies to all data provided by the STATE under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the UNIVERSITY under this grant contract. The civil remedies of Minnesota Statutes, section 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minnesota Statutes, ch. 13, by either the UNIVERSITY or the STATE. Additionally, the remedies of HIPAA apply to the release of data governed by HIPAA.

If the UNIVERSITY receives a request to release the data referred to in this clause, the UNIVERSITY must immediately notify and consult with the STATE's Authorized Representative as to how the UNIVERSITY should respond to the request. The UNIVERSITY's response to the request shall comply with applicable law.

**14.1. Information Covered by this Provision.** In carrying out its duties, UNIVERSITY shall be handling one or more types of private information, collectively referred to as "protected information," concerning individual clients of STATE programs or services. "Protected information," for purposes of this grant contract, includes any or all of the following:

(a) Private data (as defined in Minnesota Statutes, section 13.02, subdivision 12), confidential data (as defined in Minnesota Statutes, section 13.02, subdivision 3), welfare data (as governed by Minnesota Statutes, section 13.46), medical data (as governed by Minnesota Statutes, section 13.384), and other non-public data governed elsewhere in the Minnesota Government Data Practices Act (MGDPA), Minnesota Statutes, chapter 13;

(b) Health records (as governed by the Minnesota Health Records Act [Minnesota Statutes, sections 144.291 - 144.298]);

(c) Chemical health records (as governed by 42 U.S.C. § 290dd-2 and 42 C.F.R. §§ 2.1 to 2.67);



## Appendix D: Sample State U of M Grant Contract (continued)

(d) Protected health information (“PHI”) (as defined in and governed by the Health Insurance Portability Accountability Act [“HIPAA”], 45 C.F.R. § 160.103);

(e) Federal tax information (“FTI”) (as protected by 26 U.S.C. §6103), and

(f) Other data subject to applicable state and federal statutes, rules, and regulations affecting the collection, storage, use, or dissemination of private or confidential information.

**12.4. General Oversight Responsibilities.** UNIVERSITY shall be responsible for ensuring proper handling and safeguarding by its employees, subcontractors, and authorized agents of protected information collected, created, used, maintained, or disclosed on behalf of STATE. This responsibility includes:

(a) Training: Ensuring that employees and agents comply with and are properly trained regarding, as applicable, the laws listed in 14.1, and

(b) Minimum necessary access to information. UNIVERSITY shall comply with the “minimum necessary” access and disclosure rule set forth in the HIPAA and the MGDPA. The collection, creation, use, maintenance, and disclosure by UNIVERSITY shall be limited to “that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government.” See, respectively, 45 C.F.R. §§ 164.502(b) and 164.514(d), and Minnesota Statutes, section 13.05 subdivision 3.

(c) Information Requests. Unless provided for otherwise in this grant contract, if UNIVERSITY receives a request to release protected information, UNIVERSITY must immediately notify STATE. STATE shall provide UNIVERSITY instructions or direction concerning the release of the data to the requesting party before the data is released. See paragraph 12.3(e) below regarding requests from individuals for their own data.

### **14.3. Additional Duties to Ensure Proper Handling of Protected Information.** The UNIVERSITY shall:

(a) Not use or disclose protected health information other than as permitted or required by this grant contract or as required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by this grant contract;

(c) As required at 45 C.F.R. §164.410, report to STATE any use or disclosure of protected health information that is not provided for by the grant contract of which UNIVERSITY becomes aware, including any breach of unsecured protected health information or any other “privacy” or



## Appendix D: Sample State U of M Grant Contract (continued)

“security incident” as described below. Upon direction from STATE, UNIVERSITY must also attempt to mitigate harmful effects resulting from the disclosure.

(i) For purposes of this grant contract, “Security incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. Security incident shall not include pings and other broadcast attacks on UNIVERSITY’s firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above; so long as such incidents do not result in unauthorized access, use or disclosure of STATE’s information. “Privacy incident” means violation of the MGDPA and/or the HIPAA Privacy Rule (45 C.F.R. Part 164, Subpart E), including, but not limited to, improper and/or unauthorized use or disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached.

(ii) The report to the STATE must be in writing and must be sent to STATE not more than seven (7) days after learning of such non-permitted use or disclosure. The report must, at a minimum: 1) Identify the nature of the non-permitted use or disclosure; 2) Identify the PHI used or disclosed; 3) Identify who made the non-permitted use or disclosure, and who received the non-permitted or violating disclosure, if known; 4) Identify what corrective action was taken or will be taken to prevent further non-permitted uses or disclosures; 5) Identify what was done or will be done to mitigate any deleterious effect of the non-permitted use or disclosure; and 6) Provide such other information, including any written documentation, as STATE may reasonably request.

(iii) UNIVERSITY will provide notice required by 45 C.F.R. §§ 164.404 through 164.408 to affected individuals, news media, and/or the Office of Civil Rights, Department of Health and Human Services, only upon direction from and in coordination with the STATE.

(d) In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree in writing to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;

(e) Within ten (10) business days of a request from an individual or their designee, make available protected health information in a designated record set, consistent with Minnesota Statutes, section 13.04, subd. 3, and 45 C.F.R. § 164.524;

(f) Within ten (10) business days, forward any request to make any amendment(s) to protected health information in a designated record set to STATE in order for the STATE to satisfy STATE’s obligations under Minnesota Statutes, section 13.04, subdivision 3 and 45 C.F.R. §164.526;

## Appendix D: Sample State U of M Grant Contract (continued)

(g) Maintain and make available no later than fifteen (15) days after receipt of request from the STATE, the information required to provide an accounting of disclosures to the STATE as necessary to satisfy the STATE's obligations under 45 C.F.R. §164.528, or upon request from STATE respond directly to individual's request for an accounting of disclosures;

(h) To the extent the business associate is to carry out one or more of the STATE's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the STATE in the performance of such obligation(s); and

(i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

(j) Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by STATE.

### **14.4. STATE's Duties. STATE shall:**

(a) Only release information which it is authorized by law or regulation to share with UNIVERSITY.

(b) Obtain any required consents, authorizations or other permissions that may be necessary for it to share information with UNIVERSITY.

(c) Notify UNIVERSITY of limitation(s), restrictions, changes, or revocation of permission by an individual to use or disclose protected information, to the extent that such limitation(s), restrictions, changes or revocation may affect UNIVERSITY'S use or permitted disclosure of protected information.

(d) Not request UNIVERSITY to use or disclose protected information in any manner that would not be permitted under law if done by STATE.

### **14.5. Disposition and/or Retention of Protected Information/Data upon Completion, Expiration, or Contract Termination.**

Upon completion, expiration, or termination of this grant contract, UNIVERSITY shall return to STATE or destroy all protected information received or created on behalf of STATE for purposes associated with this grant contract. UNIVERSITY shall return the protected information to the STATE's Authorized Representative or provide the state with written certification of destruction of the protected information. UNIVERSITY shall retain no copies of such protected information, provided that if both parties agree that such return or destruction is not feasible, or if UNIVERSITY is required by the applicable regulation, rule or statutory retention schedule to retain beyond the life of this grant contract, UNIVERSITY shall extend the protections of this grant contract to the protected information and refrain from further use or disclosure of such information, except for those purposes that make return or destruction infeasible, for as long as UNIVERSITY maintains the information.

## Appendix D: Sample State U of M Grant Contract (continued)

**14.6. Sanctions.** In addition to acknowledging and accepting the general terms set forth in this grant contract relating to indemnification, the parties acknowledge that violation of the laws and protections described above could result in limitations being placed on future access to protected information, in investigation and imposition of sanctions (including but limited to civil and criminal penalties) by, among other agencies, the U.S. Department of Health and Human Services, Office for Civil Rights; the federal Internal Revenue Service (IRS); the Centers for Medicare & Medicaid Services (CMS); and the Office of the Attorney General for the State Minnesota.

### **14.7. Miscellaneous.**

(a) DHS Information Security Policy. Additional information regarding the handling and, as appropriate, destruction (upon expiration or termination of a grant contract) of protected information obtained from DHS is available at

<https://edocs.dhs.state.mn.us/lfserver/Public/DHS-4683-ENG>.

(b) Effect of statutory amendments or rule changes. The Parties agree to take such action as is necessary to amend this grant contract from time to time as is necessary for compliance with the requirements of the laws listed in paragraph 12.1 of this clause or in any other applicable law. However, any requirement in this grant contract or in the DHS Information Security Policy that is based upon HIPAA Rules or upon other federal or state information privacy or security laws means the requirement as it is currently in effect, including any applicable amendment(s), regardless of whether the grant contract has been amended to reflect the amendments(s).

(c) Interpretation. Any ambiguity in this grant contract shall be interpreted to permit compliance with the laws listed in paragraph 14.1 of this clause or in any other applicable law.

(d) Survival. The obligations of UNIVERSITY under this clause shall survive the termination of this grant contract.

## **15. AFFIRMATIVE ACTION and NON-DISCRIMINATION**

Affirmative Action requirements for UNIVERSITYs with more than 40 full-time employees and a contract in excess of \$100,000. If UNIVERSITY has had more than 40 full-time employees within the State of Minnesota on a single working day during the previous twelve months preceding the date UNIVERSITY submitted its response to the STATE, it must have an affirmative action plan, approved by the Commissioner of Human Rights of the State of Minnesota, for the employment of qualified minority persons, women and persons with disabilities. See Minnesota Statutes, section 363A.36. If UNIVERSITY has had more than 40 full-time employees on a single working day during the previous twelve months in the state in which it has its primary place of business, then UNIVERSITY must either: 1) have a current Minnesota

## Appendix D: Sample State U of M Grant Contract (continued)

certificate of compliance issued by the Minnesota Commissioner of Human Rights; or 2) certify that it is in compliance with federal Affirmative Action requirements.

### **Affirmative Action and Non-Discrimination requirements for all UNIVERSITIES:**

15.1. The UNIVERSITY agrees not to discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status in regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age in regard to any position for which the employee or applicant for employment is qualified. Minnesota Statutes, section 363A.02. UNIVERSITY agrees to take affirmative steps to employ, advance in employment, upgrade, train, and recruit minority persons, women, and persons with disabilities.

15.2. The UNIVERSITY must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The UNIVERSITY agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Minnesota Rules, part 5000.3550

15.3. UNIVERSITY agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

**Notification to employees and other affected parties.** The UNIVERSITY agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices will state the rights of applicants and employees, and UNIVERSITY's obligation under the law to take affirmative action to employ and advance in employment qualified minority persons, women, and persons with disabilities.

The UNIVERSITY will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the UNIVERSITY is bound by the terms of Minnesota Statutes, section 363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment minority persons, women, and persons with physical and mental disabilities.

**Compliance with Department of Human Rights Statutes.** In the event of UNIVERSITY's noncompliance with the provisions of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes, section 363A.36, and the rules and relevant orders issued pursuant to the Minnesota Human Rights Act.

## Appendix D: Sample State U of M Grant Contract (continued)

The UNIVERSITY will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the UNIVERSITY is bound by the terms of Minnesota Statutes, section 363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment minority persons, women, and persons with physical and mental disabilities.

**16. WORKERS' COMPENSATION.** The UNIVERSITY certifies that it is in compliance with Minnesota Statute, section 176.181, subdivision 2, pertaining to workers' compensation insurance coverage. The UNIVERSITY'S employees and agents will not be considered employees of the STATE. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the STATE'S obligation or responsibility.

**17. VOTER REGISTRATION REQUIREMENT.** UNIVERSITY certifies that it will comply with Minnesota Statutes, section 201.162 by providing voter registration services for its employees and for the public served by the UNIVERSITY.

**18. OWNERSHIP OF EQUIPMENT.** Disposition of all equipment purchased under this grant contract shall be in accordance with title 45, code of federal regulations, part 92. For all equipment having a current per unit fair market value of \$5,000 or more, the STATE shall have the right to require transfer of the equipment (including title) to the Federal Government or to an eligible non-Federal party named by the STATE. This right will normally be exercised by the STATE only if the project or program for which the equipment was acquired is transferred from one UNIVERSITY to another.

**18. OWNERSHIP OF EQUIPMENT.** The STATE shall have the right to require transfer of all equipment purchased with grant funds (including title) to the STATE or to an eligible non-STATE party named by the STATE. This right will normally be exercised by the STATE only if the project or program for which the equipment was acquired is transferred from one grantee to another.

**19. FEDERAL AUDIT REQUIREMENTS AND UNIVERSITY DEBARMENT INFORMATION.** UNIVERSITY certifies it will comply with the Single Audit Act, and OMB Circular A-133, as applicable. All sub-recipients receiving \$500,000 or more of federal assistance in a fiscal year will obtain a financial and compliance audit made in accordance with the Single Audit Act, or OMB Circular A-133, as applicable. Failure to comply with these requirements could result in forfeiture of federal funds.

DEBARMENT BY STATE, ITS DEPARTMENTS, COMMISSIONS, AGENCIES OR POLITICAL SUBDIVISIONS

## **Appendix D: Sample State U of M Grant Contract (continued)**

UNIVERSITY certifies that neither it nor its principles is presently debarred or suspended by the STATE, or any of its departments, commissions, agencies, or political subdivisions. UNIVERSITY'S certification is a material representation upon which the grant contract award was based. UNIVERSITY shall provide immediate written notice to the STATE'S authorized representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION**

Federal money will be used or may potentially be used to pay for all or part of the work under the grant contract, therefore UNIVERSITY certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. UNIVERSITY'S certification is a material representation upon which the grant contract award was based.

## **19. FEDERAL AUDIT REQUIREMENTS AND UNIVERSITY DEBARMENT INFORMATION.**

FEDERAL AUDIT REQUIREMENTS AND UNIVERSITY DEBARMENT INFORMATION. UNIVERSITY certifies it will comply with the Single Audit Act, and OMB Circular A-133, as applicable. All sub-recipients receiving \$500,000 or more of federal assistance in a fiscal year will obtain a financial and compliance audit made in accordance with the Single Audit Act, or OMB Circular A-133, as applicable. Failure to comply with these requirements could result in forfeiture of federal funds.

### **DEBARMENT BY STATE, ITS DEPARTMENTS, COMMISSIONS, AGENCIES OR POLITICAL SUBDIVISIONS**

UNIVERSITY certifies that neither it nor its principles is presently debarred or suspended by the STATE, or any of its departments, commissions, agencies, or political subdivisions. UNIVERSITY'S certification is a material representation upon which the grant contract award was based. UNIVERSITY shall provide immediate written notice to the STATE'S authorized representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNATRY EXCLUSION**

Federal money will be used or may potentially be used to pay for all or part of the work under the grant contract, therefore the UNIVERSITY must certify the following, as required by the regulations implementing Executive Order 12549. UNIVERSITY'S certification is a material representation upon which the grant contract award was based.

## Appendix D: Sample State U of M Grant Contract (continued)

### CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION- LOWER TIER COVERED TRANSACTIONS

#### Instructions for Certification

1. By signing and submitting this grant contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this grant contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549. You may contact the person to which this grant contract is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this grant contract that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the



## Appendix D: Sample State U of M Grant Contract (continued)

method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

### CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION- LOWER TIER COVERED TRANSACTIONS

1. The prospective lower tier participant certifies, by submission of this grant contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this grant contract.

**20. JURISDICTION AND VENUE.** This grant contract, and amendments and supplements thereto, shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this grant contract, or breach thereof, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

**21. WAIVER.** If the State fails to enforce any provision of this grant contract, that failure does not waive the provision or the STATE's right to enforce it.

**22. CONTRACT COMPLETE.** This grant contract contains all negotiations and agreements between the STATE and the UNIVERSITY. No other understanding regarding this grant contract, whether written or oral may be used to bind either party.

### **23. PUBLICITY AND ENDORSEMENT.**

**23.1. Publicity.** Any publicity given to the program, publications, or services provided resulting from this grant contract, including, but not limited to notices, informational



## Appendix D: Sample State U of M Grant Contract (continued)

pamphlets, press releases, research, reports, signs and similar public notices prepared for the UNIVERSITY or its employees individually or jointly with others or any subcontractors, shall identify the STATE as the sponsoring agency and shall not be released without the written approval of the STATE's authorized representative.

Publication of methods and results derived from this project in theses, academic or professional journals or their presentation at symposia or scholarly meetings is hereby authorized, provided they contain the required acknowledgment of STATE support and necessary steps have been taken to protect copyright and other intellectual property rights resulting from the project.

**23.2. Endorsement.** The UNIVERSITY must not claim that the STATE endorses its products or services.

### 24. OTHER PROVISIONS.

24.1. UNIVERSITY agrees that no religious based counseling shall take place under the auspices of this grant contract.

24.2. If the UNIVERSITY has an independent audit, a copy of the audit shall be submitted to the STATE.

**24.3. Payment to Subcontractors.** (If applicable) As required by Minnesota Statutes, section 16A.1245, the prime UNIVERSITY must pay all subcontractors, less any retainage, within ten (10) calendar days of the prime UNIVERSITY's receipt of payment from the State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

**24.4. Contingency Planning.** Within 90 days of the execution of this grant contract, UNIVERSITY and any subcontractor will have a contingency plan. The contingency plan shall:

- (a) ensure fulfillment of Priority 1 or Priority 2 obligations under this grant contract;
- (b) outline procedures for the activation of the contingency plan upon the occurrence of a governor or commissioner of the Minnesota Department of Health declared health emergency;
- (c) identify an individual as its Emergency Preparedness Response Coordinator (EPRC), the EPRC shall serve as the contact for the STATE with regard to emergency preparedness and response issues, the EPRC shall provide updates to the STATE as the health emergency unfolds;
- (d) outline roles, command structure, decision making processes, and emergency action procedures that will be implemented upon the occurrence of a health emergency;

## **Appendix D: Sample State U of M Grant Contract (continued)**

- (e) provide alternative operating plans for Priority 1 or Priority 2 functions;
- (f) include a procedure for returning to normal operations; and
- (g) be available for inspection upon request.